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ABSTRACT

In October 1970, the Commission on Civil Rights published a large-scale study of "The Federal Civil Rights Enforcement Effort." Based on an evaluation of more than 40 departments and agencies with significant civil rights responsibilities, the Commission found that enforcement was characterized largely by inaction, lack of coordination, and indifference. In May 1970, the Commission issued a follow-up report to determine what progress, if any, had been made in the seven months since its October 1970 study. The basic conclusion was that some advances had been made, in terms of tentative first steps, combined with promises to do better in the future. The Federal civil rights enforcement effort is held difficult to evaluate as of November 1971. When compared to the situation that existed a year ago, the structure of the Government's effort has been improved in a number of important respects. But judged by the more objective standard of civil rights performance, the Federal Government continues to get low marks. Wide disparities exist in the performance of the many departments and agencies with civil rights responsibilities. Some are taking actions necessary to perform effectively. Others still barely recognize that they have any responsibility at all (Author/JM)

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A Report of
The United States
Commission on
Civil Rights
May 1971

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT SEVEN MONTHS LATER

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

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MONTHS LATER

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The report was prepared under the overall supervision of Martin E. Sloane, Assistant Staff Director, Office of Civil Rights Program and Policy.

STATEMENT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS ON "THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT— SEVEN MONTHS LATER"

Seven months ago, in October 1970, the United States Commission on Civil Rights issued a report evaluating the way more than 40 Federal departments and agencies were fulfilling their responsibilities under the variety of civil rights laws, Executive orders, and judicial decisions which guarantee equal rights for all citizens. The report, entitled "The Federal Civil Rights Enforcement Effort", is one of the most important documents the Commission has issued in its 13-year history. Its basic conclusion was that the great promise of civil rights laws had not been realized, that the Federal Government had not yet fully prepared itself to carry out the civil rights mandate.

Since that report was issued, the Commission has continued to assess the civil rights performances of Federal departments and agencies to determine how they have responded to the report's findings and recommendations. The Commission's conclusion, based on its current assessment, is that the Federal response over the last seven months has been, with a few significant exceptions, a continuation of tentative first steps toward more stringent civil rights enforcement and promises of better performance in the future. The Commission is not satisfied. Neither should the American people be.

The inadequacies of civil rights enforcement mechanisms found seven months ago were across-the-board; they were not unique to particular agencies or programs but, rather, were systemic to the entire Federal establishment. The most commonly found weaknesses in Federal civil rights enforcement were the following:

Lack of sufficient staff for enforcement;

Failure to afford agency civil rights officials sufficient status or authority to carry out their functions effectively;

Failure of agencies to establish clearly defined goals to govern their civil rights activities;

Isolation of civil rights programs from the substantive programs of the agency;

Adoption of a passive role in carrying out its responsibilities, such as reliance on assurances of nondiscrimination or complaint processing rather than the initiation of independent compliance investigations;

Failure to make sufficient use of the available sanctions;

Inadequate governmentwide coordination and direction of civil rights enforcement efforts.

These findings reflected the one element most characteristic of the Federal Government's civil rights position over several Administrations — lack of aggressiveness. It was so flagrant as to cause the Commission to conclude that the Federal Government had virtually abdicated its responsibility to enforce civil rights laws. Some agencies that should have been in the forefront of the enforcement effort seemed scarcely aware of their obligation; others had made only minimum efforts, evidently satisfied that they had complied with the law. A number of recommendations designed to strengthen the structure and mechanism for civil rights enforcement in Federal departments and agencies was made by the Commission. The most deepseated problems the Commission found, however, were lack of commitment to civil rights goals by Federal officials and hostile or narrow-purposed bureaucracies that view civil rights as a threat to or as outside of their prerogatives, programs, and personal inclinations. To deal with these, the Commission recommended the establishment of a system of accountability and monitoring so that the effectiveness of enforcement would no longer depend upon the attitude of individual Federal officials or the institutional bias of particular Federal bureaucracies.

In seeking to bring about the systemic changes that it believed were necessary, the Commission used the principal weapon at its command — public reporting. The Enforcement Report received wide attention when it was issued. Government officials, civil rights organizations, and concerned Americans generally, joined in expressing their indignation over the Federal Government's failure to enforce civil rights laws. For many Federal agencies, this was the first time the inadequacies of their civil rights performance had been exposed to the public.

Convinced of the urgency of the report's message and resolved that the initial reaction must be only the first, not the last, word on the subject, the Commission decided to conduct periodic and systematic followup on the Federal Government's response. It recognized that agencies required time to read and digest a report of this magnitude and to institute the necessary changes. In February 1971, five months later, the Commission sent detailed questionnaires to departments and agencies specifically designed to determine what action had been taken.

Originally, an assessment of the progress made was planned for release in April. Leonard Garment, Special Consultant to the President, however, asked for a delay so that he and George Shultz, Director of the Office of Management and Budget (OMB), could analyze the responses and use the influence of their offices to expedite changes in conformity with the Commission's recommendations. The Commission gladly agreed to this request since it was entirely consonant with our original report's basic recommendation regarding White House concern for civil rights progress.

A number of positive changes have occurred since publication of the Commission's report. The President's budget request for Fiscal Year 1972, submitted to Congress early this year, seeks to meet the need for adequate staff and other resources for effective civil rights enforcement by calling for a substantial across-the-board increase in budget for civil rights. The Commission has commended the President for this action and is particularly encouraged by the sizable budget increases for the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission, which share responsibility for ending discrimination in private employment.

The Commission is also encouraged by the fact that some agencies which, in the past, have barely acknowledged a civil rights responsibility are now not only showing signs of acknowledging it but have begun to take steps to fulfill it. The Securities and Exchange Commission has agreed to require that information on pending legal proceedings concerning violations of civil rights laws or regulations must be disclosed in registration statements. Other regulatory agencies, such as the Interstate Commerce Commission and the Civil Aeronautics Board, plan to institute formal proceedings which may result in a rule prohibiting employment discrimination in the industries they regulate. The Federal Home Loan Bank Board — responsible for supervising savings and loan associations, which are the Nation's major mortgage lending institutions — is now actively considering a regulation which will require member institutions to keep records by race of all loan applications. This will include those rejected as well as those approved and will be a means of checking on discrimination in mortgage lending.

Other encouraging developments involve actions by key Federal agencies in response to the Commission's findings and recommendations. For example, the Office of Management and Budget and the Department of the Army — two of the most influential agencies in Government — have instituted programs by which specific numerical goals for increasing their own minority employment have been established, as well as definite timetables for their achievement. The Civil Service Commission (CSC) has approved the actions of the Army and OMB as entirely consistent with Federal personnel policy, and just recently informed all agencies that it considers the goals and timetables approach an acceptable management tool for achieving equality of opportunity in Government employment.

The Department of Justice is responsible for coordinating the activities of departments and agencies under Title VI of the Civil Rights Act of 1964, which assures nondiscrimination in federally assisted programs. It has been seriously understaffed for this task. The Department is reassigning six additional attorneys to its Office for Title VI. Under the proposed budget for Fiscal Year 1972 an additional six attorneys will be added to that Office, more than tripling its size since the issuance of our report.

Of special significance are the actions taken to strengthen overall coordination and direction of the Federal civil rights enforcement effort. Following one of the Commission's major recommendations, the recently created Council on Domestic Affairs, charged, under the President's 1970 Reorganization Plan, with responsibility to coordinate policy formulation in the domestic area, is establishing a permanent Committee on Civil Rights. Further, and again in accord with a major Commission recommendation, George Shultz, Director of the Office of Management and Budget, which is responsible for determining how well agencies carry out the various programs and activities within their jurisdictions, has acknowledged a leadership role in civil rights enforcement. Mr. Shultz has instructed OMB constituent units, including budget examiners, to identify and deal with civil rights issues.

These are among the encouraging developments that have taken place since the Commission's report was issued. Moreover, the picture the Commission described last October was not a totally bleak one. A number of agencies were making good faith efforts to improve aspects of their civil rights performance. In most cases, these efforts have continued and have even accelerated. For example, the Department of Agriculture, which initiated an ambitious civil rights training program in the fall of 1969, has now trained some 41,000 program personnel in an effort to develop staff awareness and sensitivity to civil rights concerns. The Department of Health, Education, and Welfare (HEW), which was one of the few agencies which collected data on minority participation in a variety of its programs, continues to do so on a regular and systematic basis.

Despite these positive actions, it would be a mistake to assume that strong civil rights enforcement is now assured or even that we have turned the corner in eliminating the many weaknesses that were found to exist. Some of the new mechanisms that have been established appear only in skeletal form, and their effectiveness cannot be gauged until flesh is added to the bones. Thus, the value of the new Committee on Civil Rights of the Council on Domestic Affairs cannot be determined until its specific duties and its role in the development of civil rights policy and practice are defined, and their results evaluated.

While many agencies have adopted some of the recommendations the Commission addressed to them, they have also declined to adopt other, and in some cases equally important, recommendations. Thus, the new emphasis on civil rights announced by George Shultz is a step of potentially special significance. But Mr. Shultz has declined to establish a Division on Civil Rights within OMB, staffed with persons who have civil rights experience, to provide guidance and direction to the staff, as recommended by the Commission. He prefers to assign this responsibility to one of the existing OMB divisions and to assign civil rights responsibilites to all OMB units as part of their regular staff duties. This approach is not indefensible, but it is not enough. In short, the Commission has serious reservations as to how well that agency, almost totally inexperienced in civil rights matters, will be able to carry out its new mandate in the absence of continuing guidance from a division whose *sole* responsibility is civil rights.

In addition, a number of actions announced by agencies represent steps that they either propose to take or are actively considering, rather than steps already taken. Thus the Federal Home Loan Bank Board has not yet established its data collection system; it is only considering that step. By the same token, the beginning of proceedings by the Interstate Commerce Commission (ICC) and the Civil Aeronautics Board (CAB) to determine whether to issue a rule prohibiting employment discrimination in the industries they regulate means that actual issuance lies well in the future, if, indeed, a rule is to be issued at all. Through long experience, the Commission has learned to wait and see what action actually results before offering its congratulations. In these cases, we would be delighted to offer congratulations at an early date and even to apologize for our battle-scarred skepticism if given the opportunity.

Of special concern to the Commission is the fact that a number of departments and agencies, including some that play key roles in the Federal civil rights enforcement effort, have done little or nothing to improve their civil rights performance since the Commission's report was issued.

The activities of agencies with responsibilities under Title VI of the Civil Rights Act of 1964 continue to be inadequate. Few collect and use information concerning their programs to determine if they are in compliance with Title VI. Even fewer have undertaken enforcement actions to eliminate violations. As an example, the Extension Service of the Department of Agriculture has yet to take enforcement action against discrimination in its State programs, six years after documenting such discrimination, and has indicated that it has no present plans to do so. The basic step of amending Title VI regulations on a governmentwide scale to improve their coverage and effectiveness still has not been taken, although four years have elapsed since the need for corrective action was recognized. The Department of Justice has informed the Commission that amended regulations will be submitted to the Attorney General for approval on June 15.

There are also some agencies which, over the past seven months, appear to have regressed in the vigor with which they are enforcing civil rights laws. In August 1970, the Department of Housing and Urban Development (HUD) informed the Commission that its goal in administering Title VIII of the Civil Rights Act of 1968, the Federal fair housing law, was "the creation of open communities which will provide an opportunity for individuals to live within a reasonable distance of their job and daily activities by increasing housing options for low-income and minority families." By April 1971, however, the Department had retreated from this stance and now states that it is opposed to use of Federal leverage to promote economic integration. The harsh facts of housing economics, however, suggest that *racial* integration cannot be achieved unless *economic* integration is also achieved. Thus, the change in HUD's "open communities" policy may not only represent a narrowing of that agency's view of its fair housing responsibilities, but may also mark the beginning of the Federal Government's withdrawal from active participation in the effort to eliminate residential segregation.

Finally, leadership is still lacking in agencies that should be playing dominant roles in the Federal civil rights effort. The Civil Service Commission is charged by Presidential Executive order with responsibility for overseeing the Federal equal employment opportunity program. Despite recent actions to facilitate more equitable representation of minorities in the Federal service, the agency still is not exercising sufficiently vigorous leadership. It is not enough for the Civil Service Commission to acquiesce when some agencies adopt numerical goals and timetables for increased minority employment. Nor is it enough to provide assistance to other agencies in developing their own goals and timetable programs. Rather, the agency should insist on the adoption of such goals and timetables by every Federal department and agency, beginning with the Civil Service Commission itself. This it has not done.

By the same token, the Department of Justice, also charged with responsibility by Presidential Executive order to coordinate enforcement of Title VI of the Civil Rights Act of 1964, one of the most basic civil rights laws of the land, has given little indication of assuming the unswerving leadership which is indispensable to firm enforcement of that law. The Department is assigning additional lawyers to carry out its Title VI responsibility but the problem will not be resolved by the mere addition of personnel. What is needed is the institution of systematic procedures by the Department of Justice that will precisely determine the degree of agency activity under Title VI and the adoption of whatever action is necessary to promote more vigorous enforcement where it is lacking. For example, sending out questionnaires such as the ones on which this Commission is basing its current assessment should be an activity in which Justice regularly and systematically engages. Since the Department has not engaged in such activities, it is in a poor position to know what the status of Title VI compliance is throughout the Government or how to improve it, seven years and two Administrations after the passage of the Civil Rights Act of 1964 and six years after the Department was given Title VI coordinating responsibilities.

The Commission must emphasize one important aspect of the changes just discussed. To the extent that progress has been made in strengthening civil rights enforcement, it is, in part, a result of the active intervention of the White House staff, particularly Leonard Garment and George Shultz. It is doubtful and improbable that even this much progress would have come about solely through the prodding of this Commission.

Some of the changes that have occurred came only after Mr. Garment and Mr. Shultz had expressed a personal interest in the way individual agencies were enforcing civil rights laws. This demonstrates the truth of the Commission's conclusion last October — that the Government's civil rights effort can be improved through the exercise of strong executive leadership. It also suggests that if sustained progress is to be made, this leadership must be exercised systematically and continuously. It must be made an institutional function of the White House staff and not the *ad hoc* expression of interest on the part of individual White House aides who have a strong commitment to civil rights progress.

Despite active White House intervention, however, major inadequacies remain and the Federal Government is not yet in a position to claim that it is enforcing the letter, let alone the spirit, of civil rights laws. This fact demonstrates how deepseated are the obstacles to meaningful civil rights law enforcement.

The inordinate delays that have occurred in implementing proposals for improved civil rights enforcement are another indication of the formidable dimensions of these barriers. For example, more than a year and a half ago the agencies that supervise and benefit mortgage lenders agreed to distribute questionnaires to member institutions to determine, for the first time, the extent of the problem of discrimination in mortgage lending. To this day, those questionnaires, worked and reworked by a task force of experts, still have not been distributed. In addition, the Department of Housing and Urban Development established task forces some two years ago to develop uniform policies governing site and tenant selection in its housing programs as an aid to achieving the goal of equal housing opportunity. As of today, these policies have not been established.

These delays raise serious doubts about the degree of commitment of some Federal agencies to take the steps necessary to assure equal rights for all. Those guilty of delay provide a variety of justifications and rationales for their lack of action. But because excuses do not excuse nor explanations explain, the Commission doubts their legitimacy. In other areas of high national priority, (and we could easily list a dozen) such procrastination would not be tolerated. We need only think of the Nation's race to the moon to recognize that delays would have been dealt with speedily and drastically. No justification would have been accepted.

There are some who may take the view that the Commission is being unreasonable to demand that the Federal bureaucracy respond more positively in so short a period of time. They may feel it is unrealistic to expect agencies which, for decades, have either ignored civil rights or, still worse, practiced their own brand of discrimination, to do a complete turn around in seven months. We take a different view.

For the Commission, the issue is simply whether Federal officials are going to honor their sworn oath to uphold the Constitution and to enforce the duly enacted laws of this land. In the most profound sense, here is an issue that is really a matter of law and order. The correct resolution of this issue should not take seven months, nor seven weeks, nor even seven minutes.

Indeed, time may well be a luxury which we can no longer afford. This is not 1956 when Dr. Martin Luther King's Montgomery bus boycott reawakened the Nation to a realization of racial injustice by making its inhumanity visible. It is not 1964 when we rode the crest of optimism, convinced that the struggle for racial equality was all but won. It is 1971 and time is running out.

The legitimate expectations of minority group members that they finally were to realize the full promise of equality have been frustrated. Many have lost faith that Government has the will or the capacity to redeem its pledge as contained in the laws it has enacted to fulfill the provisions of our Constitution and Bill of Rights. For the future well-being of this Nation, it is essential that this faith be restored, that the pledge of equality be redeemed. It is too late for promises. What is needed is action — comprehensive and total action that will achieve results, not the mere palliative of tinkering and promises.

The current assessment represents the second Commission report on the adequacy of the Federal civil rights effort. We will continue to make such reports until the results make them unnecessary. The Commission looks forward to that yet unforeseeable day. Until then, as a Nation we have promises to keep and miles to go before we sleep.

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PREFACE

In October 1970, the United States Commission on Civil Rights issued a report evaluating the performance of more than 40 Federal departments and agencies having significant civil rights responsibilities under a variety of laws, Executive orders, and court decisions. The Commission found in that report that the Federal civil rights enforcement effort suffered from a number of weaknesses and inadequacies in organization, structure, and mechanism. The Commission also found that these weaknesses and inadequacies were not unique to particular departments and agencies, nor could they be accounted for solely by the special nature of the programs the agencies administered or the civil rights laws they had responsibility for enforcing. Rather, these weaknesses were found to be systemic to the entire Federal establishment. Further, they were found to have existed for many years, over the course of several Administrations.

The Commission made a number of recommendations aimed at eliminating the weaknesses found to exist and improving the Federal Government's civil rights performance. These recommendations were addressed not only to agencies with civil rights responsibilities in specific subject areas, but also to agencies that have special roles in coordinating and directing the overall civil rights enforcement effort.

Seven months have passed since the Commission's report on "The Federal Civil Rights Enforcement Effort" was issued. The purpose of the Commission's current report is to evaluate the progress made during that period by a number of key Federal departments and agencies in resolving the problems identified by the Commission. It is important to stress that this report is limited to actions taken over the past seven months and does not relate to measures adopted previously. These were noted in the Commission's earlier report.

The report is based largely on responses from more than 25 departments and agencies to detailed questionnaires sent out by the Commission in February 1971. Although a few interviews were conducted with agency personnel for the purpose of clarifying statements that seemed ambiguous, the information in this report has been provided almost exclusively through the written responses of the agencies with no independent investigation by Commission staff. On the basis of this information, the Commission has made its own evaluation of current agency performance.

One final caveat. The Commission's recommendations in its October report were aimed at establishing a system of civil rights accountability through changes in the structure and mechanism by which civil rights laws are enforced. The Commission recognized, however, that its recommendations represented only one avenue toward strong civil rights enforcement. It also recognized that agency officials, many of whom are experienced in administering a variety of programs in areas other than civil rights, were capable of devising additional, and equally effective, mechanisms for this purpose. Therefore, in evaluating the response of the Federal bureaucracy the Commission has not taken the doctrinaire approach of criticizing agencies merely because they have not taken actions identical to those specifically recommended by the Commission. Instead, the Commission has sought to determine what steps actually have been taken and to assess the effectiveness of these steps on their own merits as measures that can redeem the Nation's promise of equality.

FEDERAL EMPLOYMENT

Civil Service Commission (CSC)

Commission Findings	Commission Recommendations
1. Minority group members remain underrepresented in all professional positions in the Government with increasing severity as the pay grade rises. Rigorous adherence to the existing merit system has impeded equitable representation of minorities at all grade levels. .... Minority underrepresentation is most pronounced at the regional level.	The Civil Service Commission should develop a governmentwide plan designed to achieve equitable minority group representation at all wage and grade levels within each department and agency. This plan should include minimum numerical and percentage goals, and timetables, and should be developed jointly by CSC and each department or agency.
2. Because positions at the executive level are usually filled by promotions from the ranks of senior level Federal personnel, most of whom are majority group members, minority group members hold less than 2 percent of these important policymaking positions.	Stronger efforts should be made to increase tangibly the number of minority group members in executive level positions by recruiting from sources that can provide substantial numbers of qualified minority group employees, such as colleges and universities, private industry, and State and local agencies.

Response		
Action Completed	**Action Planned**	**Action Under Study**
CSC has approved the new affirmative action plans of the Department of the Army and the Office of Management and Budget, (OMB), both of which include employment goals and timetables. Copies of the letters CSC sent to the Department of Defense and OMB favorably commenting on the goals and timetables concept were sent to all agency directors of personnel and directors of Equal Employment Opportunity. Letters have been sent from the Executive Director to all agencies informing them that the goals and timetables approach is consistent with the open competitive system. CSC has adopted a Sixteen-point Program for the Employment of the Spanish surnamed in the Federal Government. The Commission met with agency equal opportunity personnel and women's program officials from regional offices and field installations in four regional conferences on equal employment opportunity.		
The Chairman of CSC has met with Under Secretaries of major Government departments to urge continued recruitment of minority group members for top policy positions. CSC monitors agencies to assure the development of executive manpower plans which include training and consideration of mid-career level minority employees and the recruitment of minority group members for supergrade positions. CSC also provides assistance to agency recruiters seeking minorities.		

Commission Findings	Commission Recommendations
3. Training to facilitate advancement of lower and middle grade employees and to permit full utilization of their talents remains inadequate.	CSC and all other Federal agencies should develop and conduct large-scale training programs designed to develop the talents and skills of minority group employees, particularly those at lower grade levels.
4. Some Federal agencies have not adopted adequate procedures for collecting and maintaining racial and ethnic data on Federal employment.	CSC should direct all Federal departments and agencies to adopt the new procedures it has developed for collection and maintenance of racial and ethnic data on Federal employment.

Response		
Action Completed	**Action Planned**	**Action Under Study**
CSC continues to urge agencies to increase efforts to utilize and improve skills and training of lower level employees through the upward mobility program and the Civil Service careers programs. New courses for managers of lower level employees were instituted and several new courses were initiated to meet the skills and training needs of lower level employees. A memorandum was sent to Federal agencies reassuring them that they could use non-Government training facilities for lower level employees. A Public Service Careers Program is being implemented to assist lower level Federal employees.	CSC will conduct a survey of agency upward mobility programs in order to obtain specific data on the movement of minority employees into middle and higher level jobs. New courses for managers of lower level employees will be extended to the field before the end of FY 71. New guidelines are being developed to re-emphasize CSC interest in Federal employees obtaining a high school education.	A study is being made, in conjunction with the Department of Labor, to determine the feasibility of establishing an inter-governmental training facility for upward mobility and skills training in the Southwest. This study was initiated in response to the President's Sixteen-point Program for the employment of the Spanish surnamed by the Federal Government.
In January 1971, CSC directed agencies to develop and install collection systems which will provide minority statistical data on such matters as hiring, promotions by grade, participation in training, distribution by grade, and promotions to supervisory and managerial categories.	The uniform personnel management system, which is scheduled to be operative by December 1973, will standardize agency record keeping systems.	CSC is considering a plan to gather on a continuing basis minority data for major occupations on a governmentwide basis.

Evaluation

Insufficient progress has been made in overcoming the underrepresentation of minority group citizens in professional positions and particularly in executive level positions. The CSC has now acknowledged that the establishment of goals and timetables is a useful concept and has approved two affirmative action plans which encompass this approach. The CSC has taken action to ensure that agencies are aware of its new approach to minority employment. Yet it has not directed all agencies to adopt the goals and timetables approach in their affirmative action plans immediately, and has not, in fact, adopted them within its own agency. Unless it demands such action from all agencies and provides the prototype and guidance necessary for effective implementation, few statistically significant increases in minority professional representation can be expected for many years.

Steps taken by CSC to improve the collection of racial and ethnic data by agencies are in line with this Commission's recommendations. CSC has established a plan of action to carry out the Sixteen-point Program for Spanish surnamed Americans for CSC bureaus and offices. CSC provides now for alternative criteria to the Federal Service Entrance Examination such as performance on Graduate Record Examination, outstanding academic achievement, and cooperative school training. Its improvement of training programs for lower pay level minority employees is also worthy of note, but training must be significantly increased in terms of numbers of those affected and must be required of all agencies.

FEDERAL CONTRACT COMPLIANCE

Office of Federal Contract Compliance (OFCC)

Commission Findings	Commission Recommendations
1. OFCC has failed to provide adequate guidance to compliance agencies and Federal contractors concerning the rate of progress expected in eliminating employment discrimination and in remedying the effects of past discrimination.	OFCC, with the assistance of 15 compliance agencies, should establish on an industry-by-industry basis numerical and percentage employment goals, with specific timetables for meeting them.
2. OFCC, hampered by a lack of adequate staffing, has confined its monitoring of compliance agency enforcement activity to a series of *ad hoc* efforts that have not had lasting effects.	OFCC should strengthen its capacity to monitor performance by compliance agencies through increased staff, systematic racial and ethnic data collection, and compliance agency reporting.
3. OFCC has failed to assure that compliance agencies maintain enforcement machinery capable of monitoring compliance.	Uniform compliance review systems should be developed for use by all 15 compliance agencies.
4. OFCC and the compliance agencies have failed to impose the sanctions of contract termination or debarment on noncomplying Government contractors, which has lessened the credibility of the Government's compliance program.	OFCC should promptly impose these sanctions where noncompliance is found and not remedied within a reasonable period of time.

Response		
Action Completed	Action Planned	Action Under Study
None.	OFCC, which has established "opportunity estimates", comprising nearly 600,000 new hires and promotions of minority employees under the contract compliance program, expects that these estimates will reflect goals and timetables by the end of FY 72.	
The compliance operations of seven agencies have been reviewed for purposes of discovering basic deficiencies in agency compliance activity.	The President's budget request for FY 72 calls for a substantial increase in OFCC and compliance agency staff resources. OFCC is currently developing a system for the collection of racial data and plans to develop report and evaluation forms for contractors and compliance officers for purposes of monitoring compliance reviews.	
a. The number of onsite compliance reviews projected to be completed by compliance agencies during FY 71 will be nearly double the number conducted during 1970. **b.** Through OFCC intervention, organizational changes have been made in the compliance programs of General Services Administration (GSA) and the Department of the Interior.	**a.** OFCC is preparing a compliance manual which will set forth uniform compliance review procedures. An improved management information system is also being developed. **b.** A joint OFCC-CSC training course is planned for compliance agency personnel. **c.** With OFCC's support, substantial increases for compliance agency staffs have been proposed for FY 72.	
In 250 cases, procedures have been instituted, in the form of "show-cause" notices, which can lead ultimately to debarment or contract cancellation. In six cases, notices of proposed debarment or contract cancellation have been issued. But no contractor yet has been actually debarred nor has any contract been cancelled.		

Commission Findings	Commission Recommendations
5. Contract compliance in the construction industry, which has been implemented primarily by federally imposed plans in Washington and Philadelphia and locally developed "hometown" agreements, has been ineffective and limited.	Goals and timetables for minority employment should be applied throughout the industry and systematic enforcement mechanisms should be created.

Response		
Action Completed	**Action Planned**	**Action Under Study**
Minority employment plans with hiring goals and timetables covering all employment of Federal or federally assisted construction contractors were imposed in three major cities in early May.	The goals and timetables approach will be applied to the practices of all contractors utilizing construction trade unions which are not parties to a "hometown" agreement.	A national construction compliance plan with goals and timetables related to minority concentrations is being considered.

Evaluation

The contract compliance program continues to suffer from the failure of OFCC to provide adequate guidance concerning the setting of specific goals and timetables for achieving increased minority employment and establishing criteria for compliance. In the absence of such guidance, neither compliance agencies nor contractors are in a position to know what is expected in terms of the rate of progress required in eliminating discrimination and remedying the effects of past discrimination. While the Philadelphia Plan concept of federally imposed minority hiring goals and timetables has been extended to three more cities, a national industrywide construction compliance plan with goals and timetables has yet to be developed. Minority unemployment and underemployment are continuing at a substantially higher rate than for majority workers.

A variety of improvements in reporting procedures are planned, but their full implementation lies in the future. OFCC has conducted a number of needed reviews of compliance agencies' performance, but their impact is unknown and systematic reporting procedures still have not been established. The contract compliance program has suffered from a lack of sufficient staff resources. The President's FY 1972 budget calls for a substantial increase in resources for OFCC and the compliance agencies, which should enable them to carry out their responsibilities with increased effectiveness.

Finally, although OFCC has implemented a large number of procedures that can lead ultimately to the sanction of contract termination or debarment, the fact that these sanctions have never been imposed continues to weaken the contract compliance effort.

Equal Employment Opportunity Commission (EEOC)

Commission Findings	Commission Recommendations
1. EEOC's effectiveness has been impaired by weak enforcement powers, limited by statute to enforcement through "conference, conciliation, and persuasion".	Congress should amend Title VII of the Civil Rights Act of 1964 to authorize EEOC to issue cease and desist orders to eliminate discriminatory practices through administrative action.
2. EEOC has lacked sufficient staff to carry out its responsibilities with maximum effectiveness.	EEOC staff should be increased to a level commensurate with the scope of its civil rights responsibilities.
3. EEOC has further restricted its effectiveness by placing heavy emphasis on the processing of individual discrimination complaints, making relatively little use of its initiatory capabilities such as public hearings and Commissioner-initiated charges, to broaden its attack against job bias.	EEOC should emphasize initiatory activities, such as public hearings and Commissioner charges, to facilitate elimination of industrywide or regional patterns of employment discrimination.
4. EEOC has failed to establish the mechanisms necessary to process complaints with dispatch.	EEOC should amend its procedures to make more effective use of the complaint processing system.
5. EEOC has not developed a system of priorities for complaint processing by which cases of greater importance are handled on an expeditious basis.	EEOC should assign priority to complaints of particular importance and emphasis should be placed on processing complaints involving classes of complainants rather than individuals.

Response		
Action Completed	Action Planned	Action Under Study
None.	Legislation to provide EEOC with cease and desist order powers is pending in Congress.	None.
None.	The President's budget request for FY 72 calls for a substantial increase in staff resources for EEOC.	None.
During the first six months of FY 71, 36 Commissioner charges were issued, 12 as a direct result of EEOC's June 1970 hearing in Houston, Texas. EEOC called upon the Federal regulatory agencies to adopt rules prohibiting employment discrimination by their regulatees. EEOC intervened in a rate making procedure before the FCC alleging that the discriminatory employment patterns of a telephone and telegraph company barred it from deserving a rate increase.	EEOC plans to hold at least two hearings during FY 72. EEOC also is developing a system of "target" industries, corporations, and unions, for purposes of making more effective use of Commissioner charges. EEOC anticipates that a number of Commissioner charges recently issued after the Houston hearing will be referred to OFCC for "show cause" orders.	None.
EEOC is implementing a reorganization which it hopes will enable it to effectively resolve new complaints and to dispose of its complaint backlog.	None.	EEOC is studying the development of a capacity to spot investigative backlogs and conduct task force operations to reduce the caseloads to a size manageable by regional staff.
None.	EEOC is developing procedures to consolidate charges and coordinate simultaneous investigations and settlement.	As a result of recent court decisions, EEOC is considering plans for improved enforcement.

EEOC

Evaluation

The relative ineffectiveness of EEOC in meeting the problem of employment discrimination is attributable, in part, to the lack of strong enforcement powers in the agency and a lack of sufficient staff resources to carry out the responsibilities it has. Legislation providing EEOC with cease and desist order powers is pending in Congress and, if enacted, would considerably strengthen EEOC. By the same token, the President's budget request, which calls for a substantial increase in EEOC staff resources, would enable the agency to meet its responsibilities more effectively, particularly in the area of reducing the sizable backlog of cases currently before it and cutting down the time involved in processing complaints.

The impediments to EEOC's effectiveness, however, cannot be eliminated solely by reference to additional powers or increased staff. For example, in the past EEOC placed inadequate emphasis on initiatory functions such as Commissioner charges and public hearings, to broaden the scope of its attack on employment discrimination. EEOC is in the process of being reorganized and plans to increase these initiatory activities and to use them in a more systematic manner. Thus, two hearings are planned for FY 1972 and increased emphasis is being placed on Commissioner charges. Its actions with regard to Federal regulatory agencies are also worthy of note. It does not appear, however, that EEOC is developing a comprehensive program of initiatory activities or that such activities are to be a major focus of the agency's work.

Further, in view of the heavy emphasis EEOC has placed on processing complaints it is necessary for the agency to establish a system of priorities to assure maximum impact from the complaint process. No such system of priority, however, has been established. For example, complaints referred to EEOC by OFCC are treated no differently from other charges filed with EEOC. Thus the opportunity is lost to make use of the leverage afforded through the strong contract compliance sanctions available to EEOC by assigning a priority to such cases.

Department of Justice—Civil Rights Division—Employment Section

Department of Justice—Civil Rights Division—Employment Section

Commission Findings	Commission Recommendations
1. The Employment Section of the Civil Rights Division (CRD) is handicapped by its small size.	The staff of the Employment Section should be increased to a level commensurate with its important responsibilities.
2. The Department has largely limited its employment activities to cases involving discrimination against blacks, and has placed insufficient emphasis on litigation in which American Indians, Spanish surnamed Americans, or women are the major victims of employment discrimination.	Litigation to prevent employment discrimination against Spanish surnamed Americans, American Indians, and women should be significantly increased.
3. The Department has failed to devote sufficient staff resources to cooperating with EEOC and OFCC so that its litigation becomes part of a coordinated total Government effort to eliminate employment discrimination.	The CRD should cooperate with EEOC and OFCC so that its litigation function is used to complement the powers of these two agencies.

Response		
Action Completed	Action Planned	Action Under Study
The Section had 30 attorney positions in FY 70 and 37 in FY 71.	The Section has requested 42 attorney positions for FY 72.	None.
Of the nine suits filed by the CRD alleging employment discrimination since July 1970, one case alleged discrimination against women and in one other case, Spanish speaking persons were victims, although not the primary victims of the alleged discrimination.	None.	None.
The Chief of the Employment Section or his representative meets on a bimonthly basis with representatives of EEOC and OFCC. *Ad hoc* relationships between the three agencies have also continued.	None.	None.

Evaluation

The Employment Section of the Justice Department's Civil Rights Division continues to play a key role in the Federal effort to end employment discrimination in the private sector. The size of the Section has increased since July 1970 and further staff additions have been requested for FY 1972. The increase may be related to the increase in the number of lawsuits initiated by the Section: It filed only four cases from October 1969 to June 1970, while bringing nine new court actions in the nine-month period from July 1970 to March 1971. Nonetheless, the small number of attorneys assigned to the unit remains one of its major problems. Litigation in the area of employment discrimination often involves a variety of complex and time-consuming issues and requires a significant investment of manpower. Without a sizable increase in its staff, the Section will be limited to participation in a relatively small number of cases in an area which calls for a voluminous amount of litigation.

The Section continues to emphasize cases involving discrimination against blacks, largely to the exclusion of handling matters in which women, American Indians, and Spanish surnamed Americans are treated unjustly in the private employment sector. Of the 59 suits filed by the Section since 1966, only one sought to redress the grievances of women and only one was aimed primarily at correcting a pattern of discrimination operating against Mexican Americans and American Indians. Finally, although the Section maintains *ad hoc* and more structured relations with EEOC and OFCC, it has not developed a governmentwide plan for an attack on employment discrimination, utilizing its litigation authority in systematic coordination with the sanction and conciliation powers of OFCC and EEOC.

Interagency Staff Coordinating Committee (ISCC)

Commission Findings	Commission Recommendations
1. The Interagency Staff Coordinating Committee which was established in July 1969, among the EEOC, OFCC, and the Department of Justice, to assure the coordination of Federal equal employment efforts has not worked effectively.	Interagency agreements and efforts at coordination under the Interagency agreement should be intensified and the three agencies should institute procedures to improve coordination.
2. The lack of coordination in Federal nondiscrimination efforts in private employment has resulted, in large part, from the fact that responsibilities are split among three separate agencies, each having different orientations and goals.	The contract compliance responsibilities of OFCC and the litigation responsibilities of the Department of Justice should be transferred to EEOC, so that all responsibilities for equal employment opportunity will be lodged in a single independent agency.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None.	Procedures are being developed to ensure that compliance efforts will be made well in advance of contract awards.	None.
Legislation to transfer OFCC to EEOC is pending before Congress. However, both EEOC and OFCC have opposed this move.	None.	None.

Evaluation

No new significant efforts to coordinate Federal Government equal employment opportunity policy and enforcement operations have been initiated since publication of the Commission's study. In fact, one Memorandum of Understanding between EEOC and OFCC to coordinate cases of major public concern was rescinded by the Department of Labor on January 11, 1971, less than three months after it was agreed to. In October 1970, the Commission concluded that only by transferring OFCC's contract compliance responsibilities and Justice's litigation responsibilities to EEOC could effective coordination of Federal equal employment efforts be achieved. In the light of continued ineffective coordination, the Commission continues to believe that consolidation of equal employment opportunity functions is necessary.

HOUSING

Department of Housing and Urban Development (HUD)

Commission Findings	Commission Recommendations
1. HUD's enforcement powers under Title VIII of the Civil Rights Act of 1968 (Federal Fair Housing Law) are limited by statute to "conference, conciliation, and persuasion".	Title VIII should be amended to authorize HUD to enforce the law through issuance of cease and desist orders.
2. HUD lacks sufficient staff resources to carry out its fair housing responsibilities with maximum effectiveness.	HUD's equal opportunity staff should be increased to a level commensurate with the scope of its fair housing responsibilities.
3. HUD maintains an "open communities" policy, but has failed to define this policy with sufficient breadth and specificity to assure that its activities will facilitate the expansion of housing opportunities for minorities throughout metropolitan areas and reverse the trend toward racial and economic separation.	HUD should clarify its "open communities" policy to assure that its activities are not confined mainly to the resolution of individual complaints, but are addressed also to the broader purposes of Title VIII.
4. Although HUD has urged other agencies (financial regulatory agencies) concerned with fair housing to collect racial and ethnic data on program participation as a means of monitoring compliance with Title VIII, HUD has failed to collect such data uniformly for its own programs.	HUD should collect racial and ethnic data on participation in all its programs.
5. Although HUD has urged other agencies to adopt uniform site selection policies governing the location of their installations to assure adequate housing for lower-income families, HUD has failed to establish uniform site selection policies governing its own programs.	HUD should establish site selection policies, now applicable only to public housing, governing all its housing programs to facilitate expanded housing opportunities for lower-income and minority families throughout metropolitan areas.
6. HUD has not developed uniform tenant selection criteria governing its lower-income housing programs that would facilitate an expansion of housing opportunities throughout metropolitan areas for lower-income and minority families.	HUD should establish such uniform tenant selection criteria.
7. HUD refers complaints to States maintaining fair housing laws without regard to the performance of those States in providing relief to complainants.	HUD should develop standards for complaint referrals to States based on the adequacy of performance of those States.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None.	None.	According to HUD, authority to issue cease and desist orders is one of a number of legislative changes being considered.
None.	The President's FY 72 budget request provides for a substantial increase in equal opportunity staff resources for HUD.	None.
HUD now views its "open communities" policy narrowly quoting the President as stating that: "This Administration will not go beyond the law . . . by using Federal power, Federal coercion or Federal money to force economic integration of neighborhods."	None.	According to HUD, policies and practices regarding equal housing opportunity are currently under review in HUD, the Department of Justice, and the White House.
HUD now collects racial and ethnic data regarding all HUD housing programs.	None.	None.
None.	None.	Site selection policies for HUD programs are currently under review by HUD, the Department of Justice, and the White House.
None.	None.	Uniform tenant selection criteria are under review by HUD, the Department of Justice, and the White House.
HUD has undertaken training programs with numerous State commissions to facilitate their handling of referred complaints.	HUD plans to develop performance standards governing its complaint referrals to States. Such standards are being drafted.	None.

HUD

Commission Findings	Commission Recommendations
8. Although the Assistant Secretary for Equal Opportunity is supposed to be the official responsible for carrying out HUD fair housing duties, including those under Title VI of the Civil Rights Act of 1964, HUD's Title VI regulations indicate that program administrators are given this responsibility.	HUD's Title VI regulations should be amended to make it clear that the Assistant Secretary for Equal Opportunity is the responsible Department official under Title VI.
9. HUD has never used the sanction of fund termination under Title VI in cases of actual discrimination.	HUD should terminate recipients found to have practiced discrimination in violation of Title VI.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None.	According to HUD, appropriate amendments to Title VI have been prepared and will appear in the Federal Register in the near future.	None.
None.	None.	None.

Evaluation

HUD, which carries the Federal Government's major responsibility for assuring equal housing opportunity under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and the Executive order on equal employment in housing, has failed to improve its performance in the seven months since issuance of the Commission's report. In fact, HUD appears to have regressed in the vigor with which it approaches its fair housing responsibilities. At the time of the Commission's earlier report, HUD stated that its fair housing activities were governed by an "open communities" policy aimed at increasing housing options for low-income and minority families. Since that time, the Department appears to have narrowed the scope of this policy to rule out any activity aimed at facilitating economic integration. In view of the fact that minority families are disproportionately represented among the Nation's lower-income families, HUD's adherence to a policy against economic integration will severely limit the scope of its activities and is likely to result in even greater reliance on the processing of individual complaints than is currently the case.

Increased staff and the institution of a system of racial and ethnic data collection on program participation should be of help to HUD. In other areas, however, little if any action has been taken to correct existing weaknesses in the Department's policies and practices. Thus uniform site selection and tenant selection criteria governing HUD housing programs, which have been under study for nearly two years, still have not been issued, nor does HUD claim that their issuance is imminent. Referrals to State fair housing agencies still are made on the basis of the laws enacted in those States rather than their performance in providing relief to complainants. Regulations under Title VI of the Civil Rights Act of 1964 still provide that program administrators are responsible for enforcing that law, despite the fact that more than three years have passed since the position of Assistant Secretary for Equal Opportunity was created to carry out all of HUD's equal opportunity programs. HUD still has never debarred any recipient for discrimination in violation of Title VI. Although HUD maintains that the *availability* of this sanction has resulted in voluntary compliance on a number of occasions, the fact that it has never been used tends to undermine the credibility of HUD as a vigorous enforcer of that law. Finally, HUD, which is limited to methods of "conference, conciliation, and persuasion", in enforcing Title VIII and lacks the authority to issue cease and desist orders, is not prepared to say that it favors legislation that would provide the Department with such cease and desist order authority.

Department of Justice-Civil Rights Division (CRD)—Housing Section

Commission Findings	Commission Recommendations
1. The Department, which has responsibility under Title VIII for bringing lawsuits in cases involving patterns or practices of violations, has suffered from a serious staff shortage, limiting the number of lawsuits in which it can be engaged. Nonetheless, the Department has brought a comparatively large number of lawsuits concerning violations of Title VIII.	Staff of the Housing Section of the Civil Rights Division should be increased to a level commensurate with the scope of its responsibilities.
2. The Department has been insufficiently concerned with problems of housing discrimination against minority groups other than blacks.	The Housing Section should intensify its efforts at protecting members of all minority groups against housing discrimination.
3. Although the Department has established a system of priorities aimed at assuring that its activities under Title VIII have the greatest impact in opening up housing opportunities for minorities, it has not yet been involved in cases involving discrimination by mortgage lenders or cases in other areas that can have maximum impact in opening up entire metropolitan areas.	The Department should bring lawsuits that have maximum impact in preventing discrimination in mortgage lending and facilitating minority access throughout metropolitan areas.

Response		
Action Completed	**Action Planned**	**Action Under Study**
The Section had 17 attorney positions in FY 1970 and 20 in FY 1971. The Department has continued its aggressive program of lawsuits under Title VIII, despite staff limitations, and has secured consent decrees establishing important precedents for affirmative action.	The President's budget request for FY 72 calls for an additional increase of six staff attorney positions for the Housing Section.	None.
Since July 1970, the Department has been involved in only one case concerning a nonblack minority family.	None.	None.
The Department still has not been involved in a case involving mortgage lending discrimination. Further, it has not initiated any suit concerning discriminatory zoning or land use controls It has, however, intervened in three such lawsuits.	None.	None.

Evaluation

The Housing Section of the Civil Rights Division continues to carry out its responsibilities aggressively, as measured by the number of Title VIII lawsuits it has brought and the affirmative requirements it has secured in consent decrees. Increases in staff for the Housing Section proposed in the President's budget submission for Fiscal Year 1972, while they would enable the Housing Section to carry out its responsibilities more effectively, still leave the Section with too little in the way of resources.

The Department still is insufficiently concerned with the problems of housing discrimination against minority groups such as Mexican Americans, Puerto Ricans, Orientals, and American Indians, having instituted only one such case since July 1970, involving discrimination against a Spanish speaking family. Further, the Department has failed to initiate any lawsuits involving discriminatory zoning or other land use controls maintained by suburban communities to exclude lower-income families and minority families in particular. Such lawsuits, if successful, could have a significant impact in accomplishing the broad purpose of Title VIII.

FEDERAL FINANCIAL REGULATORY AGENCIES

Federal Home Loan Bank Board (FHLBB)
Comptroller of the Currency (CoC)
Board of Governors of the Federal Reserve System (FRB)
Federal Deposit Insurance Corporation (FDIC)

Commission Findings	Commission Recommendations
1. The agencies have failed to institute mechanisms to assure against discrimination in mortgage lending by their member institutions.	**a.** The agencies should require their member institutions to maintain racial and ethnic data on approved and rejected mortgage loan applications.
	b. The agencies should develop instructions and procedures for examiners to enable them to detect discriminatory practices.

Response		
Action Completed	Action Planned	Action Under Study
a. FHLBB — None.	a. All four agencies plan to distribute questionnaires to supervised lenders inquiring into possible discrimination policies and practices in mortgage lending.	a. FHLBB — A regulation is being drafted requiring the keeping of racial and ethnic data on mortgage applications, which will be considered by the Board.
CoC — None.		CoC — None.
FRB — None.		FRB — None.
FDIC — None.		FDIC — None.
FHLBB — The Board has formed an Office of Housing and Urban Affairs with primary responsibility to advise the Board on civil rights matters. The Director of this Office is also Chairman of the Board's Task Force for Civil Rights. A Housing Coordinator has been appointed in each of the 12 District Federal Home Loan Banks to work to increase substantially participation by the savings and loan industry in financing of low-and moderate-income housing.	FHLBB — An initial draft of guidelines which will become part of the Examination Manual has been completed. The guidelines are aimed at revealing discriminatory lending practices.	
CoC — None.	CoC — None.	CoC — None.
FRB — None.	FRB — The agency believes there is some merit to this proposal and favors the use of such a document as soon as it can be satisfactorily developed.	FRB — None.
FDIC — None.		FDIC — None.

FHLBB, CoC, FRB, FDIC

Commission Findings	Commission Recommendations
	c. The agencies should require their member institutions to post notices in their lobbies stating that the institution does not discriminate in mortgage lending and informing the public that such discrimination is in violation of the Fair Housing Law.
	d. The agencies should develop a data collection system designed to reveal patterns or practices of discrimination in home mortgage lending.
	e. The agencies should develop procedures for the imposition of sanctions for violations of Title VIII, including cease and desist orders and termination of charters or Federal insurance.

Response		
Action Completed	Action Planned	Action Under Study
FHLBB — None.	FHLBB — None.	FHLBB — The Board is actively studying several alternative ways of effectively notifying each prospective borrower of his rights regarding nondiscrimination in mortgage lending.
CoC — None.	CoC — None.	CoC — None.
FRB — None.	FRB — None.	FRB — The agency states that there would be some efficacy to such a notice, but because some banks do not make mortgage loans and others make them only in exceptional cases, some exceptions would be in order.
FDIC—None.	FDIC — None.	FDIC — None.
FHLBB — None.	FHLBB — None.	FHLBB — The agency believes the HUD questionnaire may provide a starting point for the development of such a data collection system.
CoC — None.	CoC — None.	CoC — None.
FRB — None.	FRB — None.	FRB — The agency is willing to discuss with HUD the possibility of developing a data collection system for selected areas.
FDIC — None.	FDIC — None.	FDIC — The agency believes that the HUD questionnaire may provide a useful starting point for development of such a system.
FHLBB — None.	FHLBB — None.	FHLBB — None.
CoC — None.	CoC — None.	CoC — None.
FRB — None.	FRB — None.	FRB — None.
FDIC — None.	FDIC — None.	FDIC — None.

FHLBB, CoC, FRB, FDIC

Commission Findings	Commission Recommendations
2. The agencies have failed to require member institutions to include nondiscrimination clauses in their agreements with builders.	The agencies should require their member institutions to include nondiscrimination clauses in their agreements with builders, including appropriate penalties for violations such as acceleration of payment.

Response		
Action Completed	Action Planned	Action Under Study
FHLBB — None.	FHLBB — None.	FHLBB — The agency states that the scope of legal authority is not clear. This issue, however, is under study and as soon as satisfactory procedures have been devised the agency intends to present a recommendation for joint action by all four agencies to an interagency coordinating committee.
CoC — None.	CoC — None.	CoC — None.
FRB — None.	FRB — None.	FRB — None.
FDIC — None.	FDIC — None.	FDIC — None.

Evaluation

The Federal financial regulatory agencies have received very few complaints (nine in all) of discrimination in mortgage lending since enactment of the 1968 Federal Fair Housing Law. On the basis of this experience, it is extremely doubtful that complaint processing can be an effective means by which the agencies can assure against discrimination in mortgage lending by the institutions they supervise and benefit. Therefore, it is important for the agencies to adopt mechanisms for uncovering discriminatory practices. The most appropriate mechanism would be the traditional one of examination of their lending institutions. Although all four agencies concede that such examinations would require the collection of special data, only the Federal Home Loan Bank Board is actively considering a requirement that its members keep racial and ethnic data on file.

The Federal Home Loan Bank Board is also the only agency that has taken affirmative action to meet its responsibility under Title VIII. Among the actions the Board has taken is the formation of an Office of Housing and Urban Affairs to advise the Board on civil rights matters. The FHLBB also is planning to issue guidelines aimed at revealing discriminatory lending practices, which will become part of the Examination Manual. Of the three other agencies, only the Federal Reserve Board believes there is any merit to the development of civil rights instructions for examiners. The Comptroller of the Currency, by contrast, does not believe it is necessary or appropriate to emphasize procedures relating to violations of the Civil Rights Act to an extent greater than those used to discover violations of other Federal laws.

Regarding the posting of notices in the lobbies of supervised lending institutions to the effect that the institution does not practice discrimination in mortgage lending and informing the public that such discrimination is in violation of the Fair Housing Law, again, the Federal Home Loan Bank Board is the only one of the four agencies that is even studying methods of informing prospective borrowers of their rights.

All four agencies are planning to participate in the distribution of a questionnaire to supervised lenders, developed in cooperation with HUD. While three of the agencies indicate that the questionnaire may lead to a data collection system which will reveal discriminatory lending practices, one agency, the Office of the Comptroller of the Currency, does not believe that racial data would be useful for this purpose.

None of the agencies has adopted specific regulations for the imposition of sanctions against lending institutions found to be practicing racial discrimination in mortgage lending, and none of the agencies has agreed to require member institutions to include nondiscrimination clauses in their agreements with builders and developers. The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation argue that they do not have legal authority to require such actions by their member institutions, a position with which the Commission does not agree. The Federal Home Loan Bank Board is unsure of its authority in this area, but intends to submit a recommendation for joint action to an interagency coordinating committee.

General Services Administration (GSA)

General Services Administration (GSA)

Commission Findings	Commission Recommendations
1. GSA has failed to adopt a Federal installation site selection policy which assures housing access to minority citizens as a condition for location of Federal installations.	GSA should revise its site selection criteria to require that communities are open to all racial and ethnic groups as a condition of eligibility for location of Federal installations.
2. GSA has failed to implement the policy, adopted in March 1969 and reinforced by Executive Order 11512 issued February 1970, providing for housing access for low- and moderate-income families as a condition for Federal site selection.	GSA should implement its site selection policy concerning the required availability of low- and moderate-income housing as a condition of eligibility for location of Federal installations.
3. GSA has failed to implement the HUD Federal Site Selection Task Force recommendations regarding procedures for the provision of open housing as a condition of Federal location.	GSA should implement the HUD Task Force recommendations regarding uniform Government site selection procedures which provide for open housing as a condition of Federal location.

Response		
Action Completed	Action Planned	Action Under Study
None.	None.	None.
GSA has reorganized the Public Building Service, establishing an Office of Operational Planning with functions relating to site selection for Federal installations.	None.	None.
None.	None.	None.

Evaluation

While GSA has included the availability of low- and moderate-income housing as one of its site selection criteria, it has failed to provide specific guidelines for implementation. The agency has established a unit to plan procedures relating to site selection for Federal installations, but the only instructions to GSA staff so far merely recite the criterion, providing no additional guidance. Further, no policy has been announced nor requirement adopted regarding the availability of open, nondiscriminatory housing as a condition of Federal site selection. GSA states that it operates on the basis that low- and moderate-income housing "be available on a nondiscriminatory basis", and that this is taken into account in GSA's site selection process. However, there have been no specific GSA policy directives or instructions issued concerning this matter, nor has GSA taken any other official action to acknowledge this criterion. Further, when furnished a draft copy of the HUD Task Force recommendations for revised procedures on location of Government facilities, GSA commented negatively, stating that the proposed procedures would take away its flexibility and interfere with its consideration of agency needs, missions, or programs.

FEDERALLY ASSISTED PROGRAMS

FEDERALLY ASSISTED PROGRAMS— TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

AGENCIES: Departments of Agriculture (USDA), Commerce (DoC), Health, Education, and Welfare (HEW), Interior (DoI), Labor (DoL), Transportation (DoT), and Treasury (IRS)*; the Law Enforcement Assistance Administration (LEAA) and the Office of Economic Opportunity (OEO)

Commission Findings	Commission Recommendations
1. No agency has sufficient staff to carry out its Title VI responsibilities with maximum effectiveness.	Agencies should submit proposals for increased staff and financial resources necessary to carry out their responsibilities with maximum effectiveness.
2. The position of the official in charge of Title VI compliance, in most cases, is disproportionately low, when measured by his title, grade, and position in the administrative hierarchy.	The position of chief civil rights officer should be elevated to a level equal to that of officials in charge of agency programs.
3. Few agencies provide adequate civil rights training to civil rights or program personnel whose work involves Title VI.	Agencies should increase the amount and caliber of civil rights training provided to civil rights or program personnel whose work involves Title VI.

*Internal Revenue Service

Response		
Action Completed	Action Planned	Action Under Study
Some agencies have increased the size of their civil rights complement, although at a few of these agencies, such as DoI, where a major organizational change occurred, newly authorized positions have not been staffed. Moreover, staffing vacancies still persist in other agencies, such as DoT.	The responses relate mostly to anticipated appointments to vacancies in the authorized civil rights positions, such as DoI and LEAA, and expected improvements in civil rights capabilities due to planned increases in the expenditures allocated for Title VI enforcement purposes in the FY 72 budget.	LEAA is reviewing the staffing level of its civil rights office with a view toward amending its FY 72 budget request to increase substantially the number of civil rights investigators.
OEO has elevated its civil rights office to independent status and named the head an Associate Director of OEO for Human Rights reporting directly to the Director. The civil rights unit at LEAA now is responsible directly to the Administrator rather than to the General Counsel; however, the Chief of LEAA's Office of Civil Rights Compliance remains a GS-14. The Director of the Federal Highway Administration's (FHWA) Office of Civil Rights at DoT was promoted to a GS-16.	One agency, USDA, plans to elevate the status of the chief civil rights officer from a GS-16 to either a GS-17 or GS-18.	None.
More than 41,000 USDA program personnel have received civil rights training. HEW has conducted regional training sessions on the implementation of HEW's policy on educational problems of national-origin minority children and has also assured the training of about 300 State personnel in the conduct of annual Title VI onsite reviews of State health and social service agencies. Other agencies, with a few exceptions, also appear to have improved their training mechanisms.	USDA plans training for agency civil rights staff in compliance review techniques.	None.

USDA, DoC, HEW, DoI, DoL, DoT, IRS, LEAA, OEO

Commission Findings	Commission Recommendations
4. Methods by which most Title VI agencies seek to achieve and monitor compliance need strengthening. For example, some agencies rely solely on the receipt of assurances; others rely on the receipt of complaints as the yardstick of compliance. Some agencies have never conducted onsite reviews; of those that do, only a small fraction of their total recipients are reached and many of the onsite reviews are perfunctory and superficial.	Systematic onsite reviews should be conducted to assure that all recipients are reviewed at frequent intervals.
5. Despite the fact that in many cases, such as those involving construction of highways, public housing, and various other public works projects, it is necessary to determine compliance before the financial assistance is given and the projects are built, such preapproval reviews are rarely undertaken.	Preapproval reviews should be conducted by agencies that administer programs involving construction of facilities to assure that these facilities, through location and design, will serve minority group members on an equitable basis.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None. Some agencies, such as DoI, FHWA, LEAA, and IRS did not conduct any comprehensive Title VI reviews in the first half of FY 71. Of those that did, most continued to review only a small percentage of their total recipients. Furthermore, of the few agencies conducting Title VI reviews of a significant proportion of their recipients, it should be noted that these reviews tended to be done predominately as part of overall program reviews and were, for the most part, superficial.	Most agencies, such as DoC, DoI and LEAA, say that they intend to increase the number of compliance reviews.	None.
Most agencies still do not engage in preapproval review activity except on an *ad hoc* basis. The Economic Development Administration (EDA) of DoC has taken steps to further up-grade an already comparatively comprehensive preapproval review system which encompasses all public works and business development projects. Also, the Health and Social Services Division of HEW's Office for Civil Rights continues to conduct such reviews of applicants to the Medicare program.	Some agencies which have not undertaken preapproval reviews indicate that they will conduct such reviews on a limited basis.	None.

USDA, DoC, HEW, DoI, DoL, DoT, IRS, LEAA, OEO

Commission Findings	Commission Recommendations
6. Most agencies do not collect racial or ethnic data on a continuing basis, nor do they use data that are collected to evaluate the effectiveness of their programs (i.e., in terms of whether program benefits actually are reaching minority group beneficiaries on an equitable basis).	All agencies should establish compliance reporting systems, including collection of data on racial and ethnic participation in agency programs and these data should be evaluated.
7. Most agencies have been reluctant to impose sanctions, such as fund termination (some have never imposed this sanction), as a means of enforcing the nondiscrimination requirements of Title VI. Some agencies have emphasized voluntary compliance as the principal method of enforcement and have permitted protracted negotiations and interminable delays on the part of recipients while continuing to provide Federal financial assistance.	Agencies should place specific limits on the time permitted for voluntary compliance and should make greater use of the sanction of fund termination.

Response		
Action Completed	Action Planned	Action Under Study
With the exceptions of HEW (which continues to collect data regularly on minority accessibility to hospitals and extended care facilities, on minority enrollment in colleges and universities, and on minority pupil assignments in public school districts), EDA, DoL, and some USDA programs, other agencies have not instituted uniform, agencywide racial data collection systems.	EDA intends to revise some of its report forms. LEAA will be issuing a biennial compliance report form which, although not predicated on Title VI, does constitute a major improvement in that it will elicit racial and ethnic employment data from State and local law enforcement agencies.	DoC, DoI and OEO are considering the establishment of more comprehensive and refined compliance reporting systems.
With the exception of HEW, which has instituted administrative proceedings and in one recent case terminated funds under Title VI, other agencies still have not imposed any administrative sanctions in FY 71. USDA, however, did notice a recipient for hearing in FY 71.	None.	None.

Evaluation**

With the exception of minor increases in the Title VI staffs of some agencies, a few of which have been authorized and not filled, and the upgrading of one civil rights officer, there has been no marked improvement in agency commitment of resources to their Title VI efforts. Moreover, even where staff increases are evident, the increases do not appear to be commensurate with the need. Staffing vacancies still persist in both agency headquarters and regional offices. For example, two constituent agencies in the Department of Transportation, FHWA (most notably) and the Coast Guard, each have four vacancies on their respective headquarters civil rights staffs. Two of OEO's regional human rights positions are vacant. Although the adequacy of civil rights training at most agencies appears to have improved, only one agency, USDA, seems to have a training program of sufficient magnitude to provide civil rights sensitivity to agency program personnel.

With respect to the conduct of post and preapproval compliance reviews, the level of activity has not significantly changed since the Commission issued its report. Generally, agencies continue to review only a small fraction of their respective recipients and some still have not conducted any reviews. For example, Interior, FHWA, LEAA, and IRS did not conduct any comprehensive Title VI compliance reviews in the first half of FY 71. The EDA reviewed only 33 of its 6,485 recipients. Similarly, OEO, which had no compliance activity in FY 70, reviewed only 46 of its 1,034 recipients subject to Title VI in the first half of FY 71. Further, during this same period, HEW subjected only 974 of its more than 36,000 major Title VI recipients to a review. HEW did, however, institute a compliance review procedure relating to equal educational opportunity for national-origin minority group children who have primary language skills other than English. Finally, there is a virtual absence of preapproval reviews and where they are performed it is typically on an *ad hoc* basis.

In the area of collection of racial and ethnic data, the record of most agencies continues to be poor. With few exceptions, agencies still do not systematically collect racial and ethnic data as part of a uniform agency policy; consequently, they are unable to assess the overall effectiveness of their programs in terms of the needs of their potential minority group beneficiaries. An April 1971 report issued by a Federal interagency Subcommittee*** studying the racial data policies and capabilities of the Federal Government concluded that a major cause of unequal service to minorities is the failure of program managers to identify eligible minority beneficiaries; to know whether these eligibles are participating in the program; and to assess the degree to which service to minority beneficiaries is achieving the intended results.

Finally, there appears to be a continued reluctance to impose administrative sanctions such as fund termination; resolution by voluntary means continues to be the principal method of dealing with instances of nondiscrimination along with occasional referrals to the Department of Justice for possible legal action. An example of unjustified delay is evident in USDA's treatment of 11 land grant universities. The Cooperative Extension Service at these universities, which are recipients of USDA financial assistance, have never provided Title VI assurances of compliance despite the clear requirement to do so which has been operative since 1965. Furthermore, although USDA made a June 1970 request for these assurances, or alternatively for updated compliance plans, the agency subsequently decided to hold any further action in abeyance pending the outcome of court action in two of the States. Another illustration is that, although the Department of Justice (DoJ) filed suit against the Ohio Bureau of Employment Security (BES) in 1968 alleging racially discriminatory practices, the case is still pending while the parties (DoL, DoJ, and Ohio BES) attempt to negotiate a settlement.

**This chart and evaluation are derived from a partial survey of the Title VI agencies covered in the original report. However, all agencies with significant Title VI responsibilities are included.

***Subcommittee on Racial Data Collection to the Interagency Committee on Uniform Civil Rights Policies and Practices (an attorney from the Department of Justice serving as Chairman.)

Department of Justice—Title VI

Department of Justice—Title VI

Commission Findings	Commission Recommendations
1. The status of the official responsible for carrying out the Title VI coordinating function of the Department of Justice has been systematically downgraded.	The Department of Justice should establish an Office of the Special Assistant to the Attorney General for Title VI Coordination, housed in the Office of the Attorney General and reporting directly to him.
2. The amount of staff assigned to the Title VI unit in the Civil Rights Division is inadequate.	The staff of the Title VI unit should be significantly enlarged.
3. The Civil Rights Division views its Title VI coordinating responsibility narrowly, focusing on litigation rather than on assuring effective administrative enforcement by the various agencies.	The Title VI Office should not invest significant amounts of its manpower in litigation, but rather should emphasize evaluation of agency administrative actions and procedures.
4. Its liaison with agencies is not systematic, but is primarily done on an *ad hoc* basis.	Justice should systematize efforts to assure effective administrative enforcement by the various Federal agencies having Title VI responsibilities.
5. In some instances, the Department of Justice's recommendations to other departments and agencies calling for increased enforcement activity have not been acted upon.	The President should amend Executive Order 11247 (1965) to authorize the Attorney General to direct departments and agencies to take specific compliance and enforcement actions, including fund termination proceedings.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None.	None.	None.
One attorney was added to the staff of the Title VI unit a number of months ago and six attorneys were reassigned to the unit in early May.	The proposed budget for FY 72 provides for an additional six attorneys.	None.
None.	Other resources of the Department, including the U.S. Attorneys, will be given the responsibility for conducting litigation of the type which has been handled by the Title VI Office, thus freeing Title VI staff for nonlitigative activities.	None.
None.	An agency report form which should provide a picture of minority impact as well as compliance activity is being drafted. After the staff is increased the Department plans to assign particular attorneys to work on a continuous basis.	The Title VI Office will explore with OMB and various other Federal agencies the types of data necessary in order to determine if further action should be taken with regard to the implementation of agency equal opportunity goals.
None.	None.	None.

Evaluation

In the seven months since issuance of the Commission report, the Department of Justice has continued to be involved in a number of significant *ad hoc* activities involving various Title VI agencies. Despite this fact, it has not appreciably improved its efforts to coordinate the enforcement of Title VI.

For example, it has not upgraded the position of the head of the Title VI Office. It did not enlarge the size of the Title VI staff until recently when additional attorneys were transferred to the unit.

The unit has continued to utilize most of its manpower in litigation efforts. It has participated in four lawsuits and conducted investigations of other potential cases. Until the last two weeks, only one attorney was assigned to work full-time on Title VI coordination matters.

The activities of the Title VI Office include working on a priority basis with the Department of Agriculture and the Law Enforcement Assistance Administration, participating in a review of agency racial and ethnic data gathering mechanisms, collecting legal opinions concerning Title VI from various agencies and departments, and reviewing and commenting on the civil rights budgets of nine Federal agencies. It has not, however, systemized its review of agency Title VI programs; has not requested agencies to adopt equal opportunity goals; and has not been able to respond to all of the requests for assistance made by Title VI agencies.

REGULATORY AGENCIES

REGULATORY AGENCIES

Federal Communication Commission (FCC), Interstate Commerce Commission (ICC),
Federal Power Commission (FPC), Civil Aeronautics Board (CAB),
Securities and Exchange Commission (SEC)

Commission Findings	Commission Recommendations
1. Despite poor employment records in industries such as broadcasting, motor and rail transportation, airlines and power, which are regulated by independent agencies — the FCC, the ICC, the CAB, and the FPC, respectively — only the FCC has issued rules prohibiting employment discrimination by its licensees.	The ICC, CAB, and FPC should join the FCC in issuing rules prohibiting employment discrimination by their licensees.
2. The rules issued by the FCC, prohibiting employment discrimination by broadcasters, telephone, and telegraph companies, have not been effectively implemented.	The FCC should assign full-time staff to study the statistical data and affirmative action plans submitted under its employment discrimination rule and should develop standards for compliance.

Response		
Action Completed	**Action Planned**	**Action Under Study**
ICC — None. CAB — None. FPC — None.	ICC — None. CAB — None. FPC — None.	ICC — The question of the Commission's jurisdiction and power to deal with employment discrimination by its regulatees is under active study. To assist the Commission in these deliberations, the ICC will institute a rulemaking proceeding inviting comments on the Commission's jurisdiction and the type of function it can or should take in this area. CAB — The Board is studying the possibility of issuing such a rule and to assist it in its deliberation it plans to issue an advance notice of proposed rulemaking, which will request comments on the Board's authority for issuing such a rule, and the kind of rule which would be most effective. FPC — In January 1970, the Commission sought an informal opinion of the Justice Department on the question of its jurisdiction over employment practices of companies which it regulates or licenses. No response has been received from the Department of Justice.
None.	None.	None.

FCC, ICC, FPC, CAB, SEC

Commission Findings	Commission Recommendations
3. The ICC and FCC regulate industries (trucking and broadcasting) which, because of the relatively low capital investment necessary to enter them, offer substantial opportunities for minority entrepreneurship. Yet cumbersome agency license procedures, which tend to protect the interests of existing licensees, bar minority group members from entry into these industries.	The ICC and the FCC should amend their procedures concerning the issuance of licenses to facilitate minority group entrance as entrepreneurs.
4. Many minority group members are unable to challenge proposed agency actions because of the high cost of the necessary legal assistance. None of the four regulatory agencies offers free legal services to individuals or groups who wish to challenge a license renewal or other proposed agency action but who do not possess the financial means to do so.	The ICC, FCC, FPC, and CAB should provide free legal services to individuals or groups who wish to contest agency action but cannot afford to do so.
5. Although the ICC, CAB, FPC require nondiscrimination in services by the industries they regulate, they have not instituted the mechanisms necessary to insure against such discrimination effectively.	The four regulatory agencies should establish mechanisms for conducting compliance reviews of the operations of their regulatees.
6. The SEC leaves the decision of what information must be disclosed to potential investors up to registering companies and does not require specific disclosure when sanctions are being imposed for violation of Federal contract requirements under Executive Order 11246 (1965) or when lawsuits are pending under Title VII of the Civil Rights Act of 1964, although such public disclosure would tend to strengthen enforcement of equal employment opportunity requirements and would be of legitimate interest to potential stockholders.	The SEC should establish guidelines requiring companies to disclose facts concerning possible imposition of sanctions for violation of Federal contract requirements under Executive Order 11246 or pending lawsuits under Title VII of the Civil Rights Act of 1964.

Response		
Action Completed	**Action Planned**	**Action Under Study**
ICC — None. FCC — None.	ICC — None. FCC — None.	ICC — This question is part of a comprehensive study of the role of the Commission in dealing with racial matters which is now underway. FCC — None.
ICC — None. FCC — None. FPC — None. CAB — None.	ICC — None. FCC — None. FPC — None. CAB — None.	ICC — This matter is now under consideration. FCC — This possibility is now being explored. Methods of reducing the cost of participating in Commission proceedings are also being explored. FPC — None. CAB — None.
ICC — None. CAB — None. FPC — A memorandum was sent to all regional engineers informing them to pay special attention to the presence of minority group citizens at recreation facilities licensed by the FPC and to determine the reason for low usage by minorities. FCC — None.	ICC — None. CAB — None. FPC — During the forthcoming recreation season the Commission intends to intensify its observations at project recreation facilities located near areas with heavy minority populations. FCC — None.	ICC — None. CAB — None. FPC — None. FCC — None.
None.	The SEC intends to require that registering companies disclose any proceedings arising under the Civil Rights Act, any debarment or other sanctions imposed under Executive Order 11246, Title VII of the Civil Rights Act of 1964, and any sanctions imposed for violation of the nondiscrimination rules of any Federal regulatory agency.	None.

Commission Findings	Commission Recommendations
7. SEC regulations, which currently prohibit stockholders from raising questions involving "general, economic, political, racial, religious, and social" considerations, prevent socially motivated stockholders from suggesting changes in company policy that would permit corporate enterprises to play a more significant role in contributing to the resolution of civil rights problems.	The SEC should amend its regulation prohibiting stockholders from raising questions involving "general, economic, political, racial, religious, and social consideration".

Response		
Action Completed	Action Planned	Action Under Study
None.	None.	The SEC appointed a task force in September 1970 for the purpose of studying the proxy rules to determine whether they are now operating in a manner which implements the legislative purpose of the Securities Exchange Act of 1934.

Evaluation

Although it appears that the regulatory agencies are beginning to recognize that they have a role to play in combating racial and ethnic discrimination, most have not yet acted to meet this responsibility with sufficient aggressiveness. This Commission's recommendation that the ICC, CAB, and FPC issue regulations to prohibit employment discrimination by their licensees and regulatees has not been implemented. The ICC and CAB are planning to ask for public comments on their jurisdiction to issue such a rule, its desirability, and its nature, before taking definitive action. The FPC is awaiting a Justice Department opinion on its jurisdiction. The FCC, which has adopted and implemented such a rule, has not devoted the resources necessary to enforce it effectively. The FCC and ICC have not taken any steps to revise their procedures to facilitate the movement of minority group citizens into positions of ownership in the industries they regulate.

None of these four agencies has agreed to provide legal assistance to those citizens who cannot afford the high legal costs involved in challenging agency determinations which are adverse to their interests. Finally, the ICC, FCC, and CAB still rely mainly on complaints of discriminatory provision of services against their licensees to enforce their prohibition against such actions. Only the FPC has taken any action to create a more aggressive mechanism to deal with this continuing problem.

The SEC plans to adopt the Commission's recommendation that it require registering companies to inform investors of Government action accusing them of employment discrimination. It is still studying the Commission's other recommendation that it revise its proxy requirements to allow civil rights matters to be voted on by corporate entities.

CIVIL RIGHTS POLICY MAKERS

Office of Management and Budget (OMB)

Commission Findings	Commission Recommendations
1. OMB has not officially acknowledged that it has any civil rights coordinating role.	OMB should acknowledge this coordinating role and establish a Division of Civil Rights.
2. Civil Rights concerns are not systematically included in the budget review process.	The Director of OMB should direct the appropriate office units and budget examiners to give high priorities to civil rights considerations in their dealings with Federal departments and agencies.
3. No systematic review is made of agency civil rights programs to determine their sufficiency.	OMB should assist agencies in developing civil rights goals, priorities, and policies. OMB should evaluate the mechanisms utilized by the agencies to achieve their civil rights goals.

Response		
Action Completed	Action Planned	Action Under Study
This role has been acknowledged. The Director has issued two major memoranda (Oct. 30, 1970 and Mar. 25, 1971) to OMB staff assigning responsibilities necessary for fulfillment of this role. While no Division of Civil Rights has been established, the General Government Programs Division has been given overall responsibility for monitoring and reviewing the OMB civil rights effort. It is anticipated that at least two staff members will spend full-time on civil rights matters. Both the Division Chief and the Deputy Division Chief will have civil rights responsibilities.	None.	None.
In the memoranda mentioned above, the Director has specified that the budget hearing process should be used to assess agency performance in civil rights. From FY70 to FY72, the budget outlays for civil rights (excluding education) have increased from $81,670,000 to $141,191,000.	The Examiners Handbook will be revised to provide guidance for reviewing agency equal opportunity programs and other civil rights activities. The basic requirements for agency budget submissions will be revised to include appropriate requirements relating to civil rights activities.	None.
None.	Where appropriate, OMB examiners will use goals and timetables to measure civil rights performance.	None.
The above mentioned memoranda direct OMB staff to evaluate agency civil rights programs on a regular basis. OMB staff participated with White House staff in reviewing the responses of the agencies to the followup questionnaire on civil rights enforcement activities distributed by this Commission.	The March 25 memorandum also directs that a special analysis of civil rights be published; that the flow of information between other central agencies with civil rights responsibilities and OMB staff be increased; and that civil rights policies and programs which cross agencies be given special attention.	None.

OMB

Commission Findings	Commission Recommendations
	OMB should evaluate the extent of coordination between the operation of substantive programs and civil rights enforcement efforts.
4. OMB staff has not received any civil rights training.	OMB should provide civil rights training for staff members.
5. Although OMB encourages Federal agencies to collect a wide variety of program data, it has not recommended a governmentwide collection of racial and ethnic data to determine if Federal assistance programs are reaching minority group citizens on an equitable basis.	OMB should evaluate agencies' racial and ethnic data collection systems and, where necessary, recommend changes to ensure comprehensive civil rights implementation.
6. In its review of substance legislation having important civil rights implications, the Bureau usually does not inquire specifically into the civil rights of the legislation.	OMB should review the civil rights aspects of pending legislation.

Response		
Action Completed	**Action Planned**	**Action Under Study**
None.	OMB will ensure that the achievement of civil rights goals is clearly and specifically included among the performance responsibilities of program managers.	None.
A two-day training session concerning the civil rights responsibilities of various agencies was conducted for all key examiners by the Director of the Office for Title VI of the Civil Rights Division in the Justice Department.	Other training sessions will follow. Programs of information will be developed and training sessions will be instituted for examiners, management, and other staff before the next budget season.	None.
None.	Steps will be taken to improve the usefulness of civil rights statistics as a tool for assessing civil rights performance. Agency programs for civil rights data collection will be reviewed.	None.
None.	The March 25 memorandum proposes a revision of OMB Circular A-19, which covers legislative clearance procedures, to require a review of civil rights issues in the legislative review process.	None.

Overall Evaluation

OMB has now acknowledged that it has significant responsibilities in the civil rights area. In a memorandum which, if properly implemented, can have far-reaching implications for civil rights enforcement, OMB has given its examiners and management staff assignments related to ensuring that Federal agencies enforce laws, Executive orders, and policies designed to protect the rights of minority citizens. However, OMB has not created a Division on Civil Rights to provide direction and guidance to its examiners or to review their activities. In view of OMB's lack of experience in matters of civil rights concern, there is a serious question whether, absent a division devoting full attention to civil rights, the agency can carry out this responsibility with full effectiveness. It also has not agreed to the application of across-the-board civil rights goals and timetables for each of the Federal agencies. Finally, most of its actions exist, so far, only on paper, with full implementation lying in the future.

The White House

Commission Findings	Commission Recommendations
1. The White House civil rights effort has suffered from a lack of full-time staff.	The President should establish a special Civil Rights Committee in the White House Council on Domestic Affairs.
2. The actions taken by the White House to evaluate, coordinate, and establish leadership for the Federal Civil Rights effort have not been part of a systematic and comprehensive program.	The White House effort should constitute a systematic and comprehensive program. It should be responsible for identification of civil rights problems, development of specific national goals, and establishment of governmentwide priorities, policies, and timetables for their achievement. It should establish, with the assistance of the Office of Management and Budget and Federal departments and agencies, such mechanisms and procedures as are necessary to implement expeditiously the policies and achieve the goals. (See also OMB).

Response		
Action Completed	Action Planned	Action Under Study
None.	A permanent Committee on Civil Rights is being established in the Domestic Affairs Council and will be served by the staff of the Council.	None.
None. Many *ad hoc* activities, however, are undertaken.	A permanent Committee on Civil Rights is being established in the Domestic Affairs Council.	None.
None. According to Presidential Consultant Leonard Garment, the President's civil rights goals and priorities can be seen in his message and statements.	None.	None.
None. The White House considers that the responsibility for overall evaluation of agency civil rights programs resides with OMB, although it will make an input on an *ad hoc* basis.	None.	None.

Overall Evaluation

The White House has accepted the Commission's most crucial recommendation — to establish a permanent Committee on Civil Rights in the White House Council on Domestic Affairs. The duties of the Committee, however, have not yet been determined and, thus, it is not certain that the Committee will be assigned the function of developing a comprehensive and systematic civil rights program, an effort which has not been undertaken by the White House to date.

The White House staff has engaged in a large number of worthwhile *ad hoc* activities. It has provided input into Presidential messages, policies, and legislative proposals; arranged and participated in meetings with minority group leaders; provided guidance and assistance to Federal agencies in situations of particular seriousness which arise unexpectedly and which require special consideration; and worked with specific Federal agencies on a regular basis on matters of broad concern to the minority community. It also reviewed, together with OMB, the responses of the agencies to the followup questionnaires concerning civil rights enforcement activity which were distributed by this Commission. Nonetheless, no specific program of civil rights goals, timetables, and priorities has been adopted by the White House.

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary independent, bipartisan agency established by Congress in 1957 and directed to:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;

Appraise Federal laws and policies with respect to equal protection of the laws;

Serve as a national clearinghouse for information in respect to denials of equal protection of the laws; and

Submit reports, findings, and recommendations to the President and the Congress.

Members of the Commission:

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STATEMENT OF
THE UNITED STATES COMMISSION ON CIVIL RIGHTS
ON "THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT--
ONE YEAR LATER"

The report the Commission is issuing today is a progress report on the status of civil rights enforcement by the Federal Government.

In October 1970 the Commission published a massive study of "The Federal Civil Rights Enforcement Effort." Based on an evaluation of more than 40 departments and agencies with significant civil rights responsibilities, the Commission found that enforcement was characterized largely by inaction, lack of coordination, and indifference. The deficiencies we found were so extensive as virtually to nullify the impact of the important civil rights laws enacted over the last decade and to make a mockery of the efforts of the many men and women who have fought for equal rights.

Last May, the Commission issued a follow-up report to determine what progress, if any, had been made in the seven months since its October 1970 study. Our basic conclusion was that some advances had been made, in the form of tentative first steps combined with promises to do better in the future. As we put it then: "The dinosaur has finally opened one eye."

More than a year has passed since the Commission first spelled out the numerous inadequacies that pervaded the Federal civil rights enforcement effort. Where do we stand today? There is no simple answer to that question. For one thing, the answer depends on the frame of reference used in evaluating the Federal civil rights effort. Thus, when compared to the situation that existed a year ago, the structure of the Government's effort has been improved in a number of important respects.

For example, the President's Council on Domestic Affairs, the key coordinator of executive policy in the domestic area, has established a Civil Rights Committee to focus specifically on civil rights issues of national importance. The Chairman of this Committee is George Shultz, Director of the Office of Management and Budget. A year ago, the Domestic Council had no plans for including the full spectrum of civil rights within the scope of its responsibility. By the same token, the Office of Management and Budget, which plays a central role in assuring effective implementation of national policy, has made a significant start in incorporating civil rights considerations into its entire operation. It was only a year ago that OMB even officially acknowledged that it had any civil rights function.

Nor is the advance limited only to these two agencies, important as they may be. Other agencies--those with more specific civil rights responsibilities--also have moved ahead. Agencies such as the Department of Housing and Urban Development and several of those which have responsibilities under Title VI of the Civil Rights Act of 1964, have improved their civil rights structure and mechanism substantially. Progress clearly is being made.

But judged by the more objective standard of civil rights performance, the Federal Government continues to get low marks. And in the Commission's view, actual performance in the resolution of problems, not progress in the development of mechanisms alone, is the realistic yardstick by which the Government's civil rights effort should be measured.

It is no consolation to the black farmer who continues to receive assistance from the Extension Service on a racially separate and unequal basis that the Department of Agriculture is making progress. It is no source of satisfaction to the Mexican American or Puerto Rican job seeker turned down by a Government contractor that the OFCC is gradually improving. The rights these people are being denied are rights to which they are entitled now and the fact that these denials continue cannot be justified on grounds that the Government is gradually gearing up to eliminate them.

Another reason for the difficulty in assessing the current status of Federal civil rights enforcement is the existence of wide disparities in the performance of the many departments and agencies with civil rights responsibilities. Some are taking actions necessary to perform effectively. Others still barely recognize that they have any responsibility at all. This is true even of agencies with the same civil rights responsibilities.

Thus the Federal Home Loan Bank Board, which regulates savings and loan associations, the Nation's major mortgage lending institutions, recently committed itself to an ambitious, and we believe potentially effective, program to assure against discrimination in mortgage lending, which is prohibited by Title VIII of the Civil Rights Act of 1968. But the Board's sister agencies, which regulate commercial and mutual savings banks, also major mortgage lending institutions, have so far declined to adopt similar measures. The Small Business Administration and the Economic Development Administration have been steadily improving their Title VI operation, but the Department of the Interior and the Law Enforcement Assistance Administration still have barely begun to implement compliance programs.

The bar charts we have prepared indicate the progress over the last six months. They also show the disparities in the level of performance of agencies, particularly those with similar or even identical civil rights responsibilities. Above all, the charts reflect the plain fact that the overall level of performance remains low. As you can see, no agency is performing adequately.

While these charts may be thought to carry the flavor of examination scores divorced from the world of reality, that is not the case. Civil rights law enforcement is not an academic exercise and the charts reflect a very harsh reality. The low grades we have assigned to so many agencies are indicators of lack of effective action on their part in dealing with continuing discrimination in areas where the law clearly prohibits it. And the fact that many agencies still are not organized to carry out the law has increasingly tragic and real implications for the future well-being of this country.

Over the past two years, since the Commission began this extensive study of Federal civil rights enforcement, we have learned a good deal about the impediments that underlie strong civil rights enforcement and about what is necessary to stimulate more vigorous action. Perhaps the principal impediment the Commission has found is inertia on the part of the Federal bureaucracy--in some cases, a blind, unthinking, fidelity to the status quo; in others, a calculated determination to do nothing to advance the cause of civil rights.

For example, last February, the Commission sent out questionnaires to a number of agencies in an effort to find out what changes they had made following the Commission's first report on civil rights enforcement. What we learned was that almost no changes had been made, that agencies, instead of responding affirmatively to the Commission's findings and recommendations, had been sitting tight in an effort to weather the storm. It is unfortunate that only when the Commission decided to announce its findings publicly, a few changes began to be made and a few promises extended. By comparison with the previous period, March was a busy month for civil rights throughout the Federal bureaucracy.

By the same token, when the Commission again questioned agencies in September to find out what additional progress had been made, and particularly, whether those agencies that had made promises were delivering on them, we found that only a handful had done anything of significance during the preceeding months. Again, the actions that were taken followed our announcement that we would report publicly to the Nation on the status of their civil rights enforcement programs. In few cases could the actions taken be ascribed to the self-initiation of the agency. For the most part, they appeared to be taken out of a desire to avoid public embarrassment. In other cases, the possibility of public embarrassment has failed to bring about even the slightest change.

We also have learned that appearances can be deceiving--that the mere establishment of a potentially effective civil rights mechanism does not necessarily mean that stringent civil rights enforcement will follow. For example, last June the General Services Administration and the Department of Housing and Urban Development announced a new cooperative agreement to assure availability of housing for lower-income families, open without discrimination, in any community in which a Federal installation was to be located. It took nearly five months before any regulations were issued, and internal operating instructions still have not been developed. Federal installations still are being located on a business-as-usual basis.

This example is not unique. In response to Commission inquiries, agencies are quick to announce structural changes that they plan to make, or that they have just made. But rarely do they report full implementation of these changes, and more rarely still, can they point to measurable improvements in minority living conditions as a result of them.

In short, most agencies seem determined to avoid upsetting the status quo for the sake of assuring equal rights and, if change must be made, they often will be changes in form, but not in substance.

The lessons we have learned, however, have not all been negative. We have learned that difficult as it may be to stimulate needed change, it can be done. Not all agencies are resistant to the idea of strict civil rights enforcement. There are agencies, including some that occupy key positions in the Federal hierarchy, that have responded affirmatively.

We also have learned that the instruments of continual monitoring of Federal civil rights activities and public reporting of their inadequacies, which are the principal weapons at the Commission's command, can achieve significant results. What this experience suggests is that a greatly expanded monitoring effort, involving resources much greater than those available to the Commission alone, must be undertaken--an effort in which the civil rights activities of Federal agencies will be subjected to close and continuing scrutiny, and agency heads held publicly accountable.

Here, recent developments are encouraging. Of special importance is the fact that Congress, itself, through a Civil Rights Oversight Committee of the House of Representatives, is now engaged in a review of civil rights enforcement to determine how agency performance should be improved. Private groups as well are recognizing the fact that the arena in which the struggle for equal rights is being fought has changed, from that of legislation to the more difficult one of administrative enforcement.

There are some, embittered by the frustrations of dealing with bureaucracy, who may think the Commission is tilting at windmills, that its effort to move the Federal Government to firm enforcement of civil rights laws is futile. The bureaucracy, they contend, responds only to the usual pressures from traditional sources. These pressures are exerted by special interest groups that successfully manipulate Federal programs and Federal officials. They also are exerted by long-time chairmen of key congressional committees and subcommittees--almost always selected by seniority from safe districts--whose power often is used to serve narrow interests, rather than the larger public good. Against these pressures, they are convinced that civil rights advocates can do little.

There are other who see the bureaucracy in a more optimistic light, but nonetheless despair of any progress. From their standpoint, it is all the fault of this Administration. The President's civil rights statements and actions, they contend, have demoralized the bureaucracy and rendered it incapable of positive civil rights action.

The Commission takes a different view. First, we reject the notion that inaction by the Federal bureaucracy is inevitable and we find totally unacceptable the explanation that political pressures in favor of the status quo are irresistable. The fact that salutary changes already have occurred demonstrates that efforts to stimulate them are not useless, that counsels of despair are not warranted.

Second, we cannot agree with those who claim that the problem lies solely with this Administration or with the President personally. As we have noted previously, problems of inadequate civil rights enforcement did not originate in this Administration, nor was there any substantial period in the past when civil rights laws were enforced effectively. In fact, measured by the structures and mechanisms that have been developed over recent months, we now are much better equipped for civil rights enforcement than we were in the past.

Further, those who keep pinning the blame entirely on the President tend to forget the wide discretion that Federal officials have in performing their duties. Always to point accusingly at the President permits many of these career and politically appointed officials a false excuse for inaction.

This is not to say that the President has no role to play in civil rights enforcement. He represents the ultimate source of policy direction to which the Federal establishment looks for guidance. An expression of firm and unswerving dedication to civil rights law enforcement on his part can do much to steel the Executive Branch to vigorous action. And he is, in the last analysis, responsible for the success or failure of his Administration's civil rights program. Above all, it is to the President that the Nation looks, not merely for efficient administration of the law, but, more important, for leadership in helping to resolve the difficult problems facing it.

The Administration has addressed itself to a number of important civil rights issues. The Commission has agreed with some of the policies the Administration has announced and disagreed with others. Thus the Commission has fully supported the Administration's call for increased staff for civil rights enforcement and the establishment of numerical goals and timetables to expand minority employment opportunities. But the Commission also has taken strong exception to some Administration policies, particularly those concerning techniques to facilitate school integration. Nor is the Commission entirely satisfied with the policy on open housing.

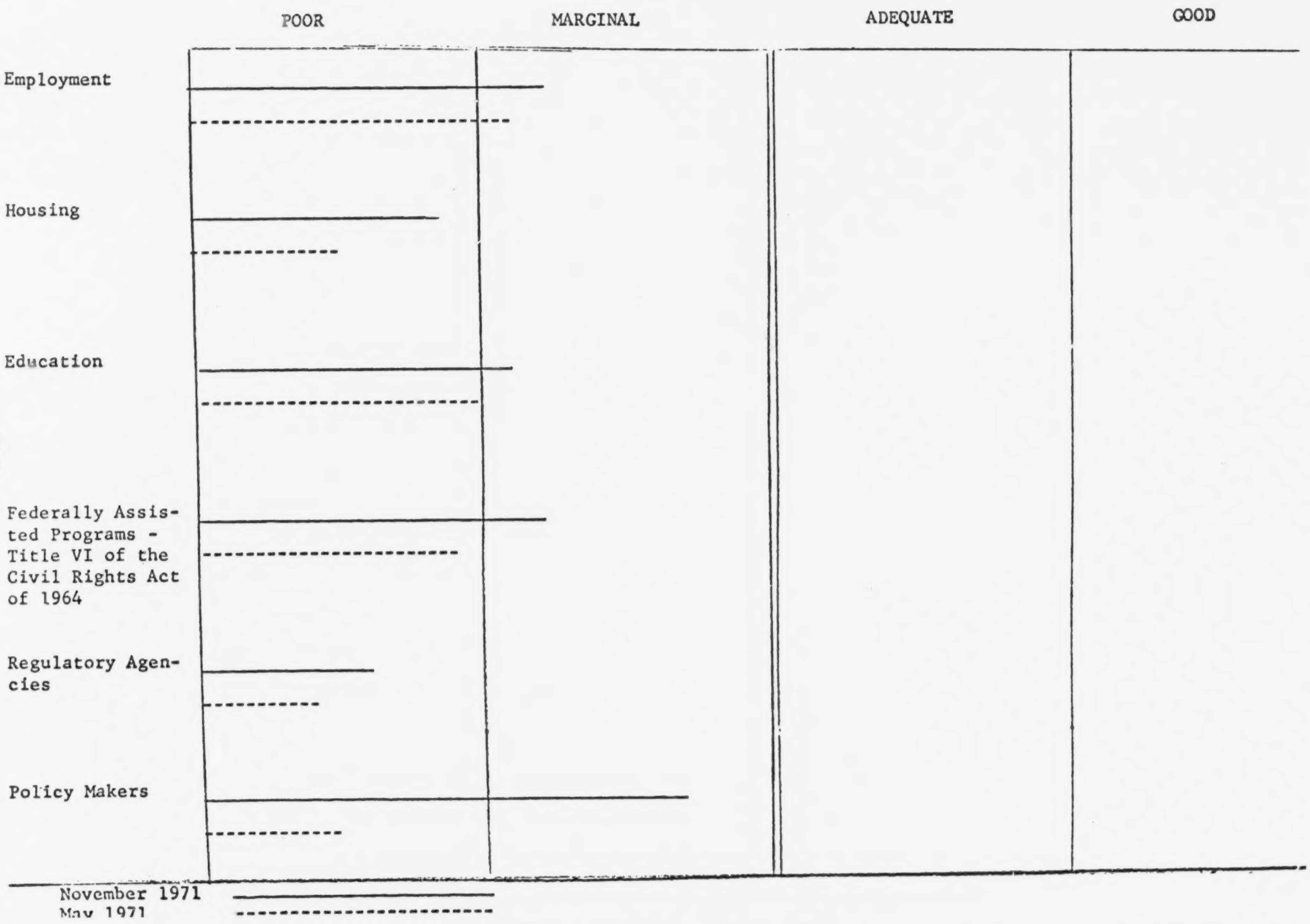
Many of these issues are complex and controversial, and have been the subject of deep concern to the Nation. The President has spoken out on them and this, we think, is important in itself. The President cannot lead the Nation by remaining silent on the important issues troubling its people. Further, such public expressions on the part of the Nation's leader can have the effect of sparking a public dialogue, which is a necessary element in the proper functioning of a democratic society.

Equally important, however, is that the policies adopted by the Administration be of the kind that will unify the country and serve the cause of equal justice. Thus it is imperative that the President's Statements on such subjects as school integration and open housing represent, not the last word, but only the beginning of a continuing public dialogue which will lead the American people to achieving a society in which all can share in the Nation's abundance. That goal is not yet in sight.

The Commission is aware of the strength of the forces that serve to impede progress in civil rights. We also are aware that the American people have grown somewhat weary, that the national sense of injustice, which was the foundation on which the legislative victories of the 1960's were built, has dimmed. We are convinced, however, that it can be rekindled and that through governmental leadership and vigorous action by public and private groups, the Nation's pledge of equality, reflected so brightly in the legislative enactments of the last decade, can be redeemed.

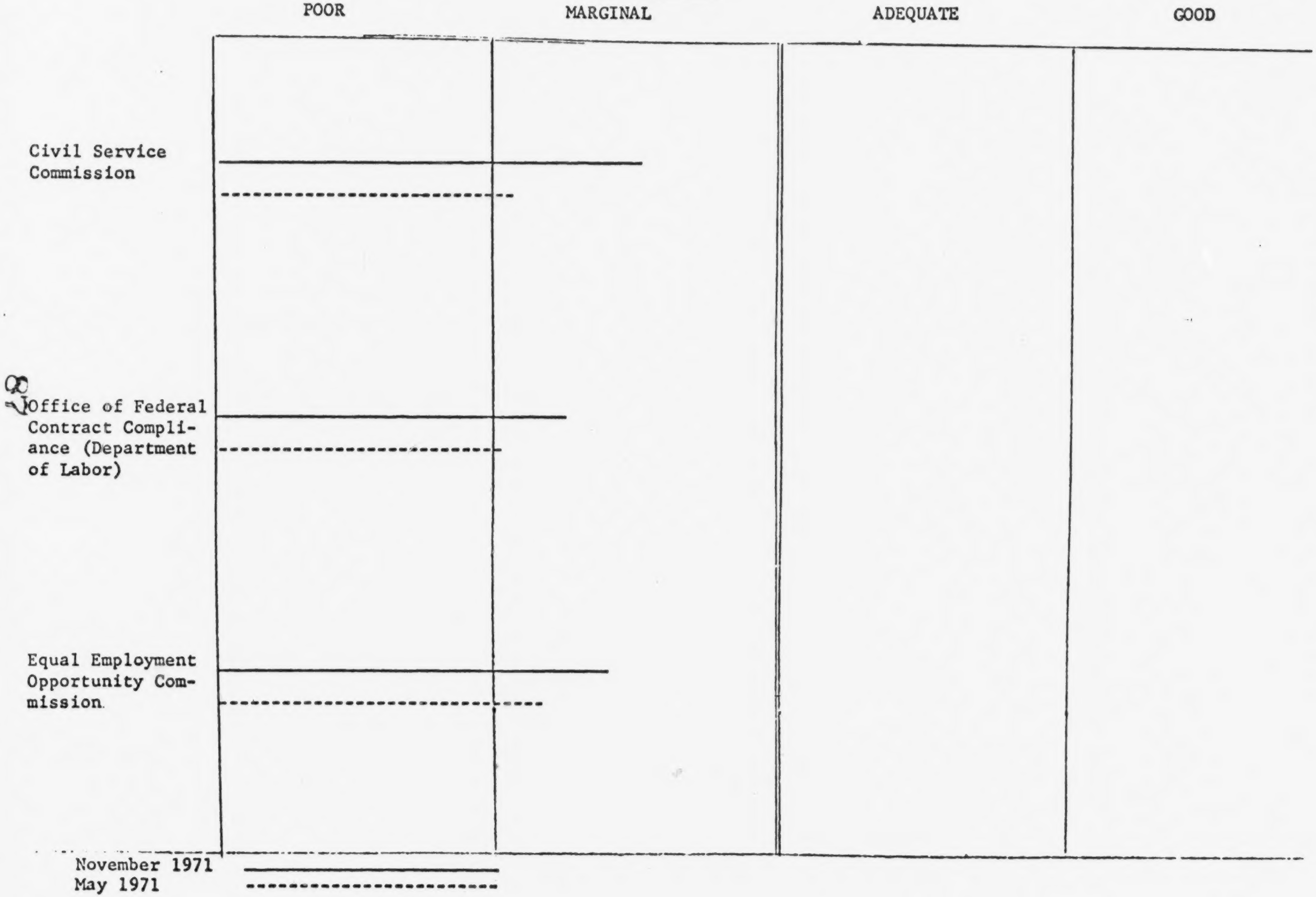
Let us be clear on the basic issue to which the Commission's reports have been addressed. The issue is simply law enforcement. Let us also be clear on what the Commission is asking government to do. We are asking nothing more than that Federal officials fulfill the obligation which our Constitution has imposed upon them--that of faithfully executing the law. This is the touchstone by which they can and must be held accountable. It is the standard by which the Commission will continue to evaluate the Government's performance.

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER



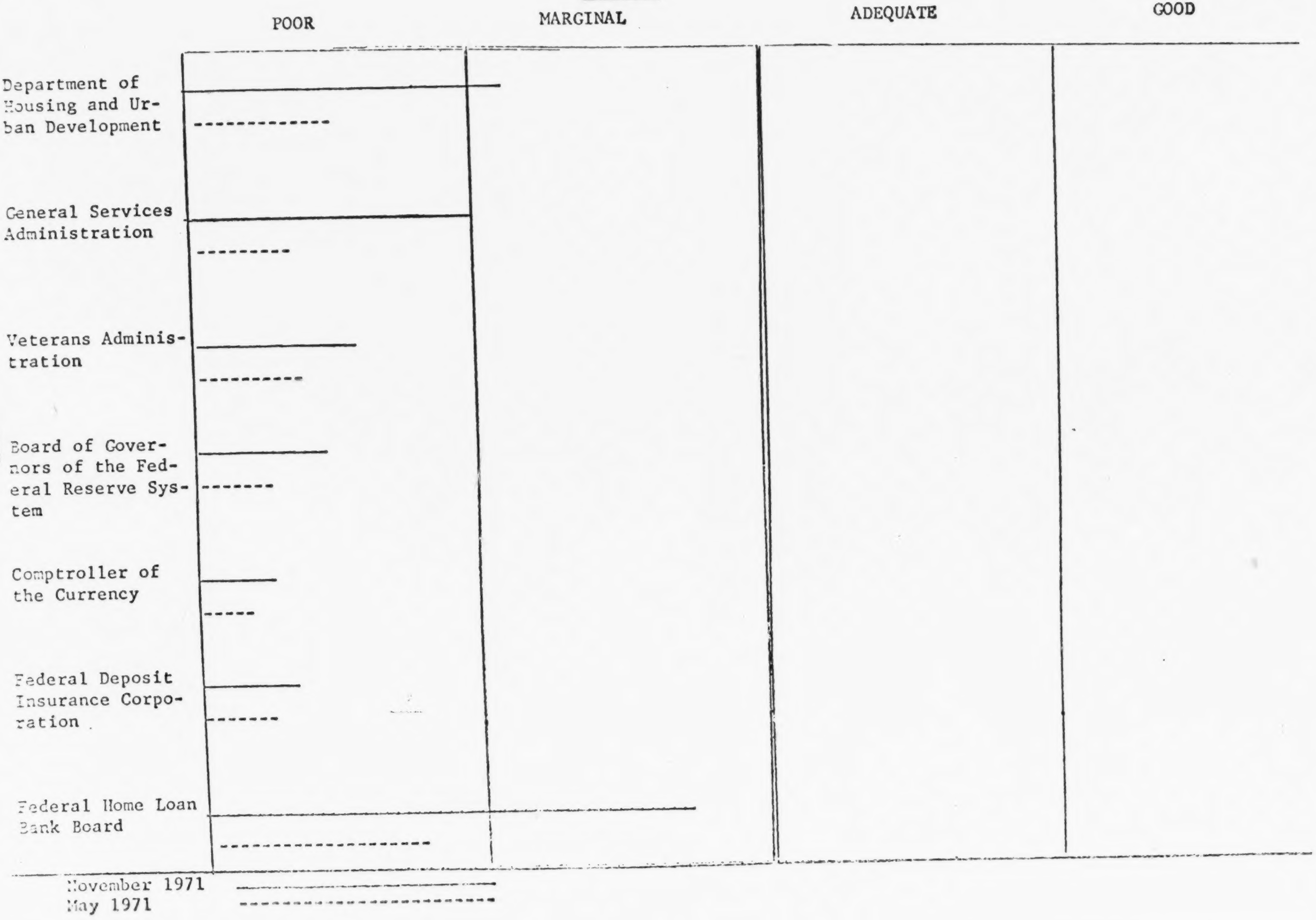
THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

EMPLOYMENT



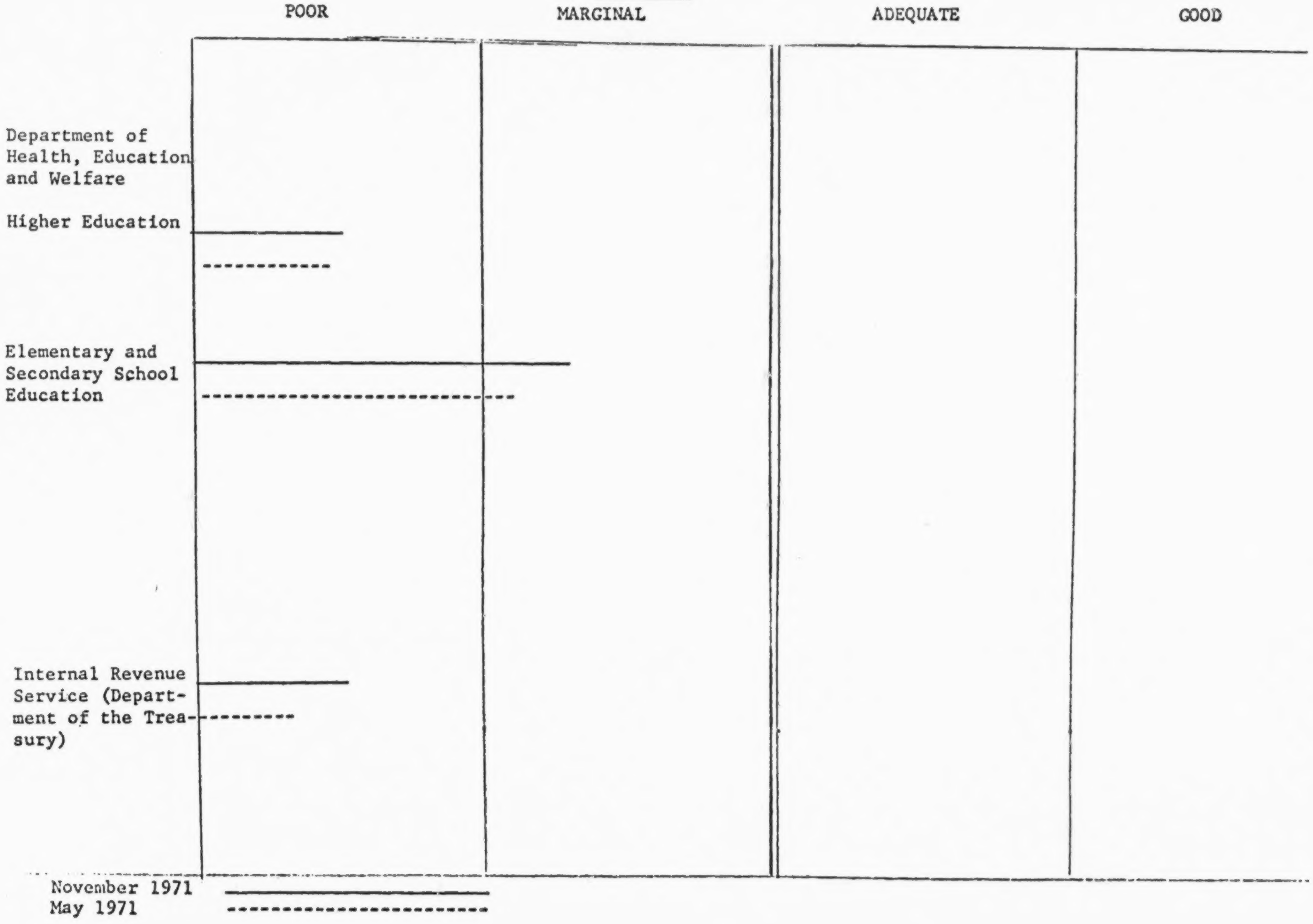
THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

HOUSING



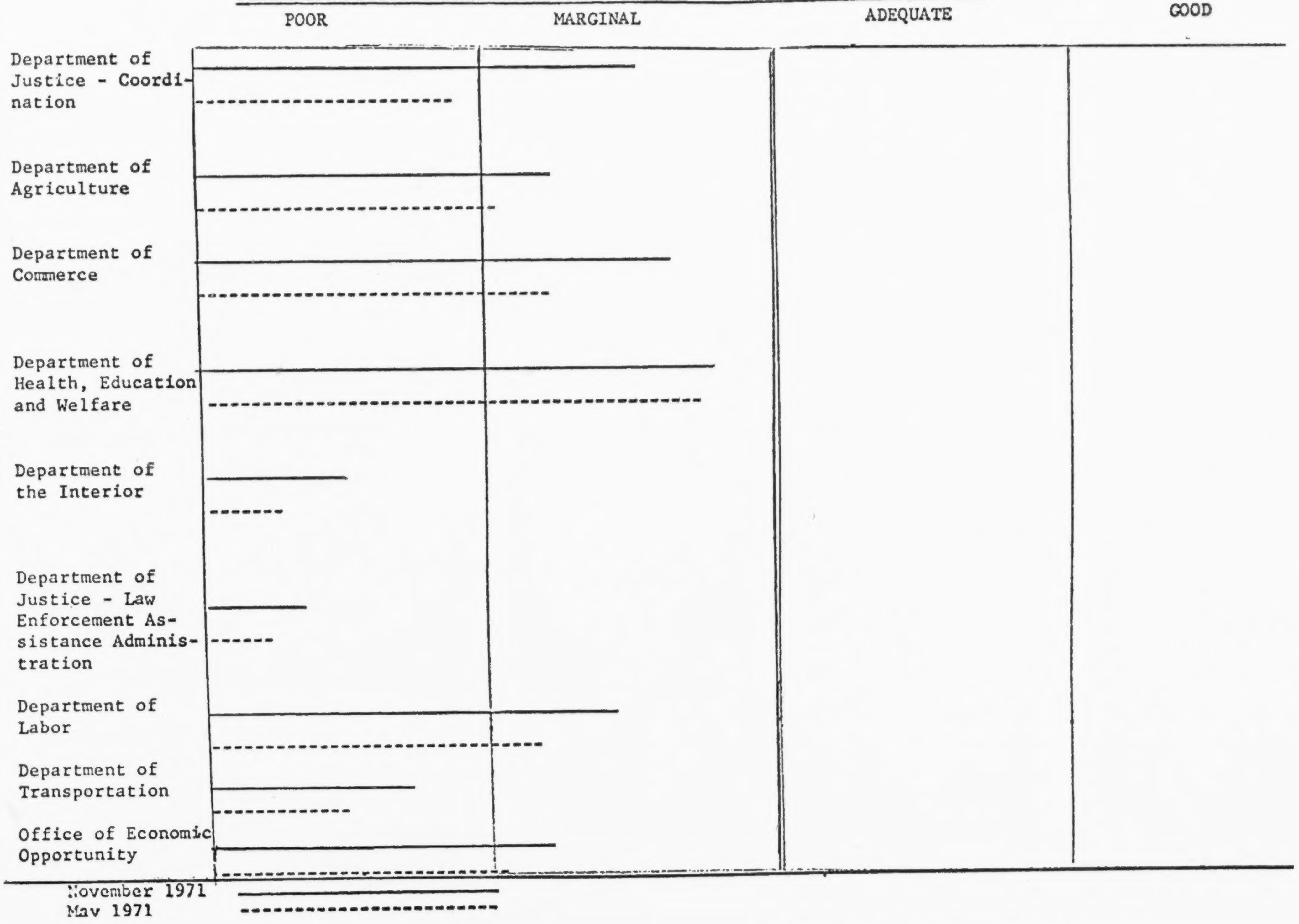
THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

EDUCATION



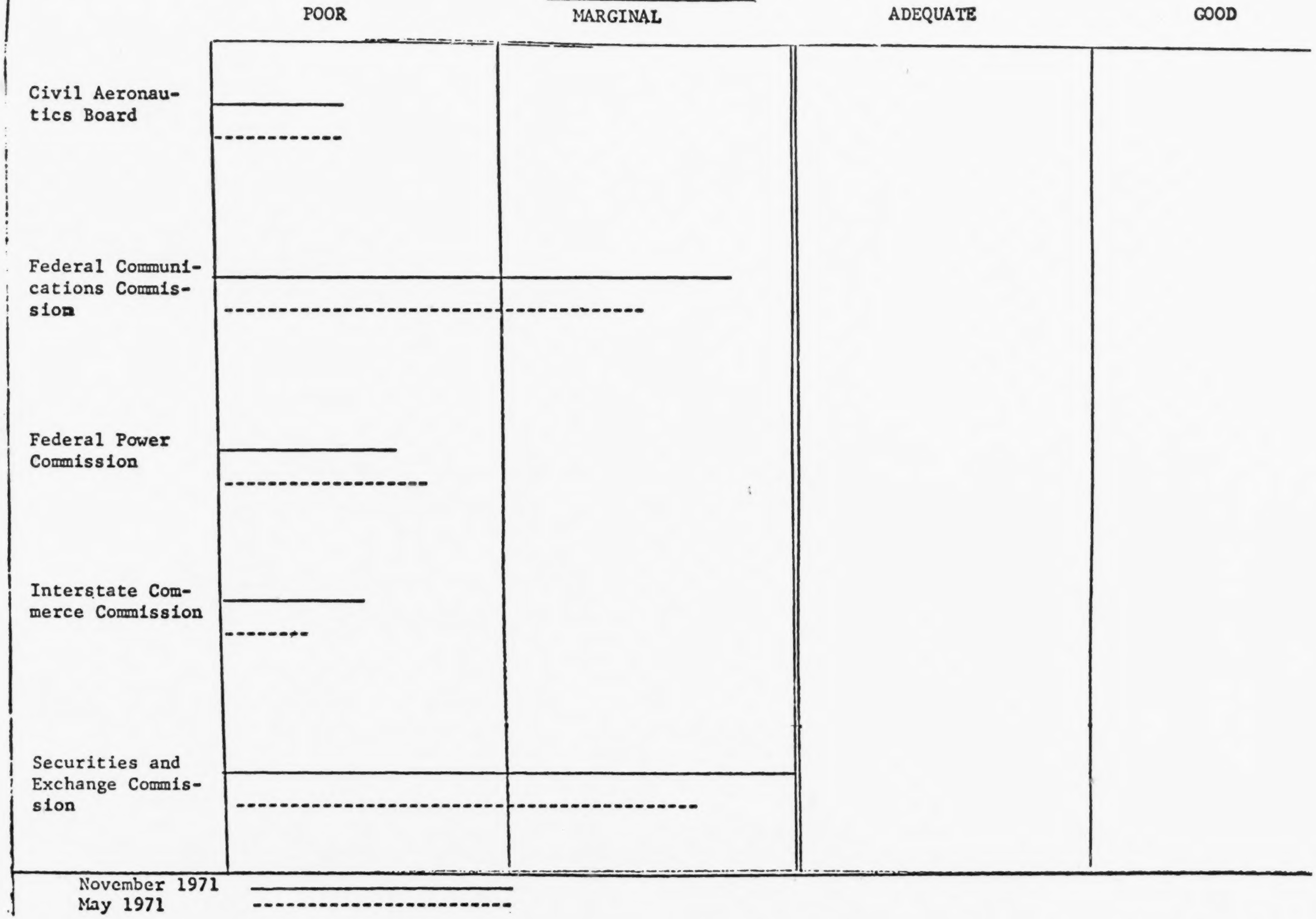
THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

FEDERALLY ASSISTED PROGRAMS - TITLE VI OF THE CIVIL RIGHTS ACT OF 1964



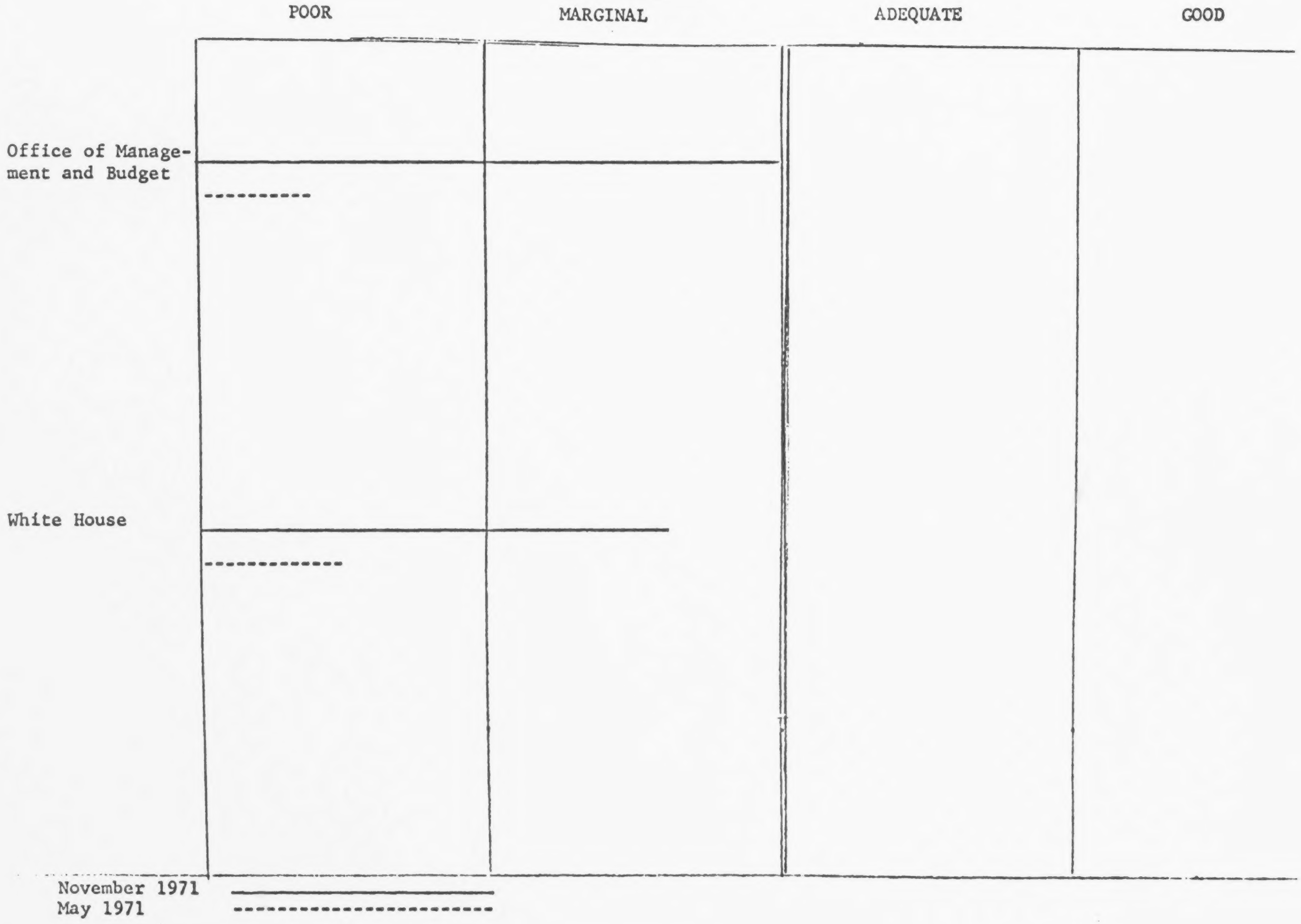
THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

REGULATORY AGENCIES



THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

POLICY MAKERS



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EMPLOYMENT

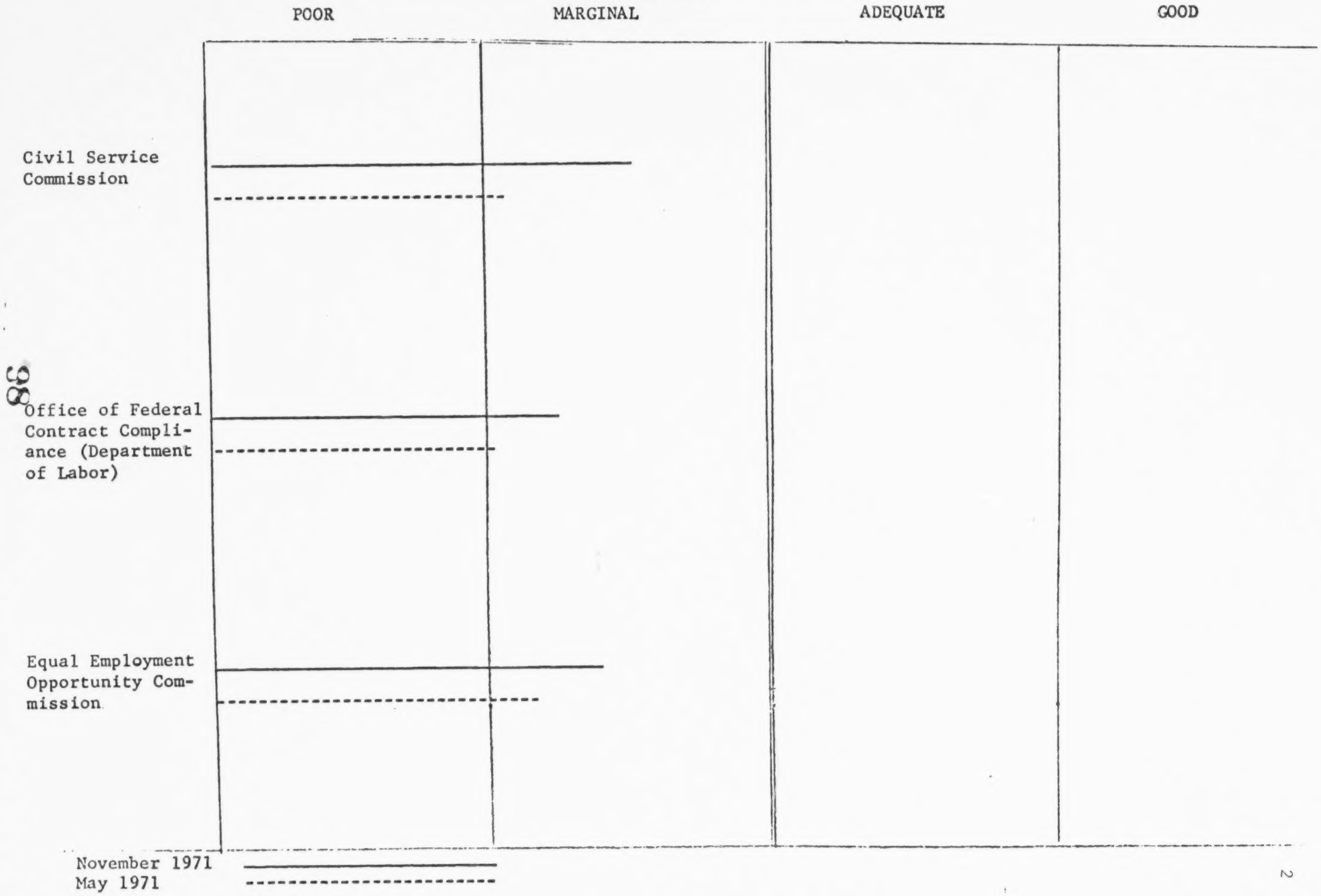
Civil Service Commission

Office of Federal Contract Compliance (Department of Labor)

Equal Employment Opportunity Commission

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

EMPLOYMENT



CIVIL SERVICE COMMISSION (CSC)*

Minority Federal Employment

Although racial and ethnic minorities comprise 19.6 percent** of all employees in the Federal Government --slightly more than their proportion of the overall population--their percentage falls far below this average in many agencies. For example, as of November 1970 minority group persons constituted less than 10 percent of all employees in agencies such as the Departments of Agriculture and Transportation, the Selective Service System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board.

Some minority groups are less represented in Federal employment than others. For example, in only four agencies of the Federal Government do American Indians constitute more than .4 percent of the employees (the percentage of their representation in the general population) and some Federal agencies have no American Indian employees. In addition, Spanish speaking*** persons constitute more than five percent of the national population but only 2.9 percent of all Federal employees. There are only 18 Spanish surnamed Federal employees in grades GS 16-18, .3 percent of all employees at these levels.

Despite progress in increasing minority employment generally, minority employees continue to be concentrated at the lower wage and grade levels, while grossly underrepresented at the managerial levels of Federal employment. For example, the average grade for all minority **General Schedule** (GS) employees of the Federal Government in November 1970 was 5.81 as compared to 8.42 for all nonminority employees. Only 130 (2.3 percent) of 5,600 so-called "supergrade" positions (GS 16-18) were held by minorities. There are 16 Federal agencies which have no minority employees in these positions. Even CSC itself suffers from an absence of minority employees at the higher levels.*

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* Executive Order 11478 (1969) reaffirms the policy of the United States Government to provide equal employment opportunity in Federal employment without discrimination because of race, color, religion, sex, or national origin. While each agency is held accountable for specific equal employment opportunity actions within its jurisdiction, the Civil Service Commission is responsible for providing overall leadership and guidance in implementing the Executive order.

** Unless otherwise indicated, employment statistics used in this paper refer to November 1970, the latest period for which such information is available.

*** The terms "Spanish speaking" and "Spanish surnamed" are used to signify members of the following ethnic groups: Mexican American, Puerto Rican, Cuban, and others of Spanish or Latin American origin.

Minority group Federal employment, as might be expected, varies considerably by regions and by States within regions. In some instances minority employment is significantly less than the minority proportion of the population. For example, in the seven-State CSC region with headquarters in Atlanta, Georgia, less than seven percent of the **General Schedule** employment was made up of minority group persons although minorities constitute almost 25 percent of the population of the region. In two States within that region--Alabama and Mississippi--minorities account for only 10.3 percent and 11.8 percent respectively of all Federal employees, even though minorities comprise 27 percent of the population of Alabama and 37 percent of the population of Mississippi.

The rate of increase in minority group employment at all levels has been greater than that of nonminorities in recent years. Nonetheless, at the current rate of increase, approximate proportional representation of minorities in high level positions cannot be achieved in the near future. For example, at the rate established between 1967 and 1970, it will take an additional 35 years for the percentage of black persons in grades GS 12-18 to equal the black percentage of the national population in 1970 (11.1 percent).

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* Only one of 53 GS 16-18 positions in CSC is held by a minority group person and no minority person holds the position of a CSC bureau chief or regional office director.

The Commission is aware of the problems involved in selecting specific data upon which certain statements may be based. By focusing here on those data which indicate the continued existence of problems in equal employment opportunity in the Federal Government, we do not mean to overlook the progress that has been and is being made. Instead, we draw attention to certain problem areas because they do exist and because we believe that they can and must be quickly corrected by the assertion of affirmative leadership in the Government's overall equal employment opportunity effort.

Implementing Numerical Goals and Timetables

In October 1970 and again in May 1971, this Commission urged the CSC to require all Federal agencies to adopt numerical goals and timetables as a technique for implementing equal employment opportunity in the Federal Government. In May 1971, CSC issued a policy position memorandum to the heads of all departments and agencies concerning the use of such goals and timetables.

The CSC statement was not an affirmative declaration, but instead, a mere suggestion that numerical goals and timetables were an acceptable management tool to deal with problems of minority underrepresentation where they are thought to exist. It also imposed certain restrictions upon the use of this important tool. Further, the CSC statement was not responsive to this Commission's recommendation that a Government-wide program for achieving equitable representation of minority group citizens at all wage and grade levels of Federal employment be established. It provided neither an overall goal nor a timetable for Government action. Finally, in no statements or actions since that time has CSC indicated that it is willing to make the imposition of both numerical goals and specific timetables a mandatory requirement in agency overall equal employment opportunity efforts.

According to CSC, seven major agencies are now using numerical goals and timetables and three others are in various stages of developing plans which will incorporate the concept.* In fact, not all of the agencies listed by CSC have actually approved numerical goals and timetables in the plans of their constituent units. At least two of these agencies--General Services Administration (GSA) and the Department of Labor (DOL)--only anticipate that the plans of their constituent units incorporating numerical goals and timetables will be approved shortly--GSA before the end of the year and DOL by next Spring. Thus, at **best,** numerical goals and timetables are actually operational in only a few instances as of this date.

Among the many agencies that have not set up goals and timetables for its constituent units is CSC itself.** CSC's Fiscal Year 1972 affirmative action plan merely mentions goals and timetables as a suggested action with reference to training -- only one of nine action items in the plan.

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* The agencies listed as using numerical goals and timetables include the Departments of Defense (with four constituent branches), Agriculture, Commerce, Health, Education and Welfare, Labor, and Transportation, as well as the General Services Administration. The agencies listed as developing plans include the Departments of Housing and Urban Development and the Treasury, as well as the Veterans Administration.

** Eighty five percent of the minority employees in CSC are in grades GS 1-8.

Testing

Many persons entering Federal employment in managerial, technical, and professional occupations do so by taking the Federal Service Entrance Examination (FSEE). This test, which is used by the Federal Government to screen applicants for approximately 200 occupational categories, is designed to measure verbal and quantitative abilities.

The validity of the FSEE, as well as the possibility that it might reflect cultural bias against minority group applicants, are questions which have been raised with increasing frequency by civil rights groups. A 1971 report published under the auspices of the Urban Institute has asserted that there is no available published evidence that the FSEE has been validated in accordance with generally accepted standards and guidelines for employment tests. The CSC contends that the FSEE has been validated in accordance with procedures established by the American Psychological Association in 1966. In fact, it appears that the validation of the test which the CSC cites does not meet the minimum test validation criteria used by the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance in their dealings with private employers.

In addition, according to the Urban Institute report, research on the pass/fail rates of persons taking the FSEE at predominately black and predominantly white colleges and universities in the South in 1968 and 1969 revealed that only 8.6 percent of the black students passed the FSEE compared to 42.1 percent of the white students in the institutions studied.* Although CSC maintains that the FSEE is free of bias against minority group persons, recent criticisms regarding the test, plus the significant racial disparities in test results, strongly suggest that the validity of the FSEE should be carefully reexamined.

Training and Upward Mobility

The most encouraging component of CSC's civil rights program continues to be in the area of the training programs it is offering and which the agencies, under CSC leadership, are developing for the purpose of providing upward mobility to lower wage level employees.** To increase its efforts in this area CSC plans to establish an Intergovernmental Training Center in San Antonio, Texas. The CSC, in cooperation with the Bureau of Indian Affairs, has established a National Indian Training Center in Brigham City, Utah. It has also opened a training center in Washington, D.C., which offers five new basic skills courses and will train 1600 students during its first year of operation.

At the agency level, the Department of Health, Education, and Welfare is establishing an Office of Upward Mobility which will administer an In-Service Work Study Program (to allow approximately 300 GS 1-7 employees to obtain long term training), a Project Bridge

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* Such analyses are unofficial since racial and ethnic data on those persons taking CSC examinations are not maintained although there appears to be no substantial reason for not doing so.

** As of November 1970, 44 percent of all minority General Schedule Federal employees were in grades GS 1-4 as compared to only 19 percent of all nonminority employees.

Career Intern Program (to allow lower level personnel to prepare for professional positions through a combined program of class study and on-the-job training), and an Upward Mobility College (to allow some 1900 lower wage and grade level employees to acquire a college degree over a 4 or 5 year period by taking college level courses in Federal offices during part of their normal workday). CSC also reports that the Office of Economic Opportunity and the Department of Commerce have developed promising upward mobility programs in their agencies.

Despite these accomplishments, there is a need for CSC training programs to be evaluated independently to determine if they are in fact resulting in significant and permanent upward movement by lower grade employees. Further, in view of the disparities in minority Government employment and in view of the relatively small number of persons now being trained,* CSC and agency training programs need to be increased.

Special Programs for Spanish Surnamed Employees

In November 1970, President Nixon announced a 16-Point Program designed to increase Spanish surnamed employment in the Federal Government. In January of 1971, a full-time coordinator for the program was recruited and placed in the CSC's Office of Federal Equal Employment Opportunity. In addition to the coordinator, only one technician and one secretary are presently assigned full-time responsibility for carrying out the 16-Point Program.

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* For example, during Fiscal Year 1971, CSC approved funding for more than 13,500 trainees in the Public Services Career Program for upgrading entry and lower level employees. By June 30, 1971, only 4,200 trainees had been enrolled.

Despite such limitations, some progress is being made in upgrading agency programs to increase employment opportunities for Spanish Speaking persons. For example, agency affirmative action plans must now include separate statements regarding activities relating to the 16-Point Program.

CSC, however, has not required agencies to develop numerical goals and timetables for increasing Spanish surnamed employment in the Federal Government. CSC's activities in this area have been criticized in the past by the Cabinet Committee on Opportunities for Spanish **Speaking People,** which continues to press CSC for a more aggressive program to recruit and upgrade Spanish Speaking individuals.

Reductions in Federal Employment

The President has ordered a five percent reduction in total Federal employment, as well as reduction in the average grade level of Federal employees over the next two years. CSC contends that these reduction efforts will have no effect on Government equal employment opportunity efforts. The practical effect of these moves, however, may be to bring equal employment opportunity programs to a standstill. This could mean, for example, that the hiring and promotion of minority employees-- a priority item in the Government's professed equal employment opportunity policy-- will be significantly reduced.

Further, any forced reductions in employment levels through job terminations are likely to affect most significantly those employees with least seniority, a disproportionate number of whom are minority group citizens. It is the joint responsibility of CSC and the Office of Management and Budget to insure that such is not the case.

Evaluation

There can be no doubt that employment opportunities for minority group persons in the Federal Government have increased appreciably in the last several years. In fact, minority group employment has been increasing at a time when overall Federal employment has been decreasing. The progress achieved in this area is due, in part, to the work of the Civil Service Commission. At the same time, however, there are also many problems remaining which will require an intensification of effort if they are to be dealt with quickly and justly.

In October 1970, this Commission, in describing ways of overcoming the major problems in the Federal Government's civil rights enforcement effort, recommended that CSC develop a Government-wide plan designed to achieve equitable minority group representation at all wage and grade levels within each department and agency, as well as a timetable for accomplishing this goal. Seven months later, in reporting on progress made in the Government's civil rights enforcement effort, this Commission noted that CSC had not exercised sufficient vigorous leadership in this matter and that it had failed to require numerical goals and timetables in the Government's approach to equal employment opportunity.

Within the last year, CSC has taken a number of affirmative steps. It has permitted agencies that wish to adopt numerical goals and timetables in promoting equal employment opportunity to do so. It has begun a program which, with additional support, has the capacity for increasing employment opportunities for Spanish surnamed employees. It is developing and encouraging the agencies to adopt training programs which will hopefully result in increased upward mobility for lower level employees.

But serious deficiencies continue to exist in the Government's equal employment opportunity effort and in CSC's leadership of that effort. CSC has not developed a Government-wide plan for achieving equitable minority group representation in Federal employment and it has not required agencies to develop specific numerical goals and timetables for their overall equal employment opportunity programs. Nor has CSC, in fact, established goals and timetables for itself. In addition, the FSEE has not been independently validated to account for differential pass/fail rates among minority and nonminority applicants. Finally, current programs for reduction in grades and employment levels threaten to undercut the effectiveness of the Government's equal employment opportunity effort.

There is little in the performance of CSC within the last year which justifies any substantial alteration of the judgement that CSC's performance to date continues to be inadequate. Its most serious failing continues to be that of not providing adequate affirmative leadership. As a result, the Federal Government's equal employment opportunity program is moving at an uneven and uncoordinated pace.

If each agency is to improve its record on the employment and utilization of minority group **persons,** CSC must exert more agressive leadership. It must first of all set an example for the other agencies by restructuring its own equal employment opportunity program to achieve a **proportionate representation of minority group persons** at all grades and levels and within the various regions. Further, it must substantially augment its efforts as coordinator of the Government's equal employment opportunity effort by undertaking new initiatives in the area of personnel management.

OFFICE OF FEDERAL CONTRACT COMPLIANCE (OFCC)* OF THE DEPARTMENT OF LABOR (DOL)

Staffing

OFCC currently has a staff of 90, with 48 persons in the national office and 42 in field offices. Of the 58 professional OFCC staff members, 27 are in the national office, while 31 are assigned in the field. The authorization for Fiscal Year 1972 is 118**, which represents an increase of 48 positions over the number authorized in Fiscal Year 1971.

Although OFCC is staffed at only 76 percent of its authorized level, DOL officials have indicated that these staffing levels are obsolete because of recent organizational changes which are intended to increase OFCC manpower greatly. The 31 OFCC professional field personnel will train selected DOL investigators already in the field so that they can effectively engage in full-time contract compliance work. The augmented contract compliance field staff is scheduled to number 80 professionals. In addition, part-time assistance is expected from other DOL investigators. These staffing plans, however, lie in the future. For the present, OFCC remains inadequately staffed.

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*Executive Order 11246, issued in 1965, directs Federal agencies to prohibit discrimination based on race, color, religion, national origin, and sex by Federal contractors and also requires contractors to undertake programs of affirmative action to promote equal employment opportunity. OFCC was established by the Secretary of Labor to administer the contract compliance requirements of the Executive order, and to monitor their implementation by the Federal agencies with responsibility for compliance activity. In cases of noncompliance OFCC has the authority to cancel a contract or debar a contractor from future contracts.

**Six of these positions are assigned to the Office of the Solicitor, Department of Labor.

Organization and Management

On October 1, 1971, the assignment of the contract compliance function in DOL was reorganized for the third time in two years. This reorganization affects Washington and field operations of OFCC, and the field operations of other DOL units.

The Employment Standards Administration (ESA) of DOL has absorbed the contract compliance standards function as one of the "employment standards" that it is responsible for enforcing. OFCC will remain a separate unit at the Washington level in ESA and continue its policy development and compliance agency monitoring role. A small Division of Compliance will be retained in OFCC to conduct a limited number of special high impact compliance investigations, which are intended to permit OFCC to keep abreast of compliance trends. All OFCC activities, however, will now require the approval of the ESA Administrator.

As a part of the reorganization, OFCC area coordinators will become ESA contract compliance specialists in the 10 ESA regional offices, each supervising a staff of between six and eight compliance personnel. Further policies developed by OFCC will be enforced by ESA staff in the field, rather than by OFCC personnel, as was the case previously. All ESA field staff, including those who once were OFCC staff, will report through the ESA regional structure to a Division of Field Operations in Washington ESA. The newly created ESA contract compliance staff will not report to OFCC and the Director of OFCC will have no control over the field staff.

The major aims of the reorganization are to improve Departmental management, to facilitate coordination with other DOL programs thought to be crucial to OFCC's program (e.g., manpower training programs and labor management relations services), and to enhance the existing ability of OFCC to monitor the actions of compliance agencies both at the Washington and field levels. Although the goals of the reorganization are notable, there is some question whether the new structure can operate effectively. The effectiveness of the reorganization depends on the validity of certain doubtful assumptions, such as the following:

1. There will be no conflict between technical and policy directives of the OFCC office and the administrative directives of the ESA regional directors.
2. OFCC operations will not be compromised in cases of conflict with other ESA policies and priorities.
3. The compliance agencies will not view the reshuffling as a diminution of OFCC's authority within DOL.

Monitoring

OFCC is responsible for monitoring the compliance activities of 15 Federal agencies to assure that contract compliance standards, as contained in Executive Order 11246 and OFCC regulations, are uniformly and completely implemented. To date, monitoring operations have progressed slowly because of manpower shortages. By April 1971, OFCC had reviewed some aspects of the operations of seven compliance agencies* by conducting joint compliance reviews with them. Since April 1971, OFCC has conducted joint compliance reviews with only one other agency, the Department of the Treasury. Moreover, the value of these reviews has not been demonstrated since no record of improvements has been reported by OFCC. In any event seven agencies remain to be reviewed.

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* Departments of Agriculture; Commerce; Defense, Health, Education, and Welfare; and Transportation; General Services Administration; and the National Aeronautics and Space Administration.

Desk Audits

More than 31,000 contract compliance reviews were conducted by the compliance agencies in Fiscal Year 1971, and 44,000 are projected for Fiscal Year 1972. If these reviews were of a high quality they would clearly improve the compliance status of many Federal contractors. There is evidence, however, suggesting that the reviews are not entirely satisfactory. On the basis of a desk audit of 75 compliance reviews and related affirmative action plans of the Department of Defense (DOD), OFCC determined that 15 of these were "clearly unsatisfactory" and made critical comments on the remainder. OFCC has concluded that the audit is a revealing monitoring tool and now intends to conduct audits of 50 reviews and plans from each of the other compliance agencies. The timing of these audits has not yet been set.

Under the authority granted it by the Executive order, OFCC has attempted to bring about organizational changes in the compliance agencies. For example, under OFCC direction the General Services Administration reorganized its contract compliance enforcement operation into a centralized structure. OFCC has not been able, however, to obtain the organizational changes it desires at the Department of Transportation

After more than six months the Secretary of Transportation is still considering the report of a study made of this matter.

Further, although OFCC has supported the recommendations of the Blue Ribbon Panel Study of DOD*, which recommended a centralization of the contract compliance program, no changes have been made in the program.

New Monitoring Tools

OFCC is in the final stages of developing three important monitoring tools which are intended to establish a standard for contractor compliance actions and provide uniformity to all compliance reviews and other compliance agency actions, thus greatly simplifying its own monitoring task. These instruments are: Form "A," Form "B," and the OFCC compliance manual.

Form "A," a contractor self-analysis form, still being reviewed by the Office of Management and Budget (OMB), would require all contractors to maintain the same kind of information for review. When Form "A" is utilized in conjunction with the yet to be implemented Form "B," a uniform compliance review guideline, and a compliance manual which would standardize compliance operations for OFCC and the compliance agencies, a better monitoring framework will exist. OFCC states that within 60-90 days of OMB approval of Form "A," both Form "B" and the compliance manual, which has been under consideration for at least three years, will be issued.

Construction Compliance

OFCC has developed three approaches for assuring that Federal requirements of affirmative action contained in Executive Order 11246 are implemented by federally assisted construction contractors in more than 100 cities and metropolitan areas, and is considering a fourth.

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*The Blue Ribbon Panel Report on the Department of Defense to the President and the Secretary of Defense was delivered on July 1, 1970.

The three approaches are:

(1) imposing on Federal contractors in a particular metropolitan area a minority employment and training plan, which contains an annually increasing set of percentage range goals for minority employment in selected skilled trades for a period of four years;

(2) assisting representatives of labor unions, construction contractors, and the minority community to negotiate a voluntary "hometown" plan for a particular metropolitan area, which contains employment and training goals and timetables for specific skilled trades;

(3) issuing "bid conditions," applicable to future construction contracts in a particular metropolitan area, which contain minority employment percentage range goals (as do the imposed plans) but which offer the terms of the locally negotiated "hometown" plan as an alternative.

The fourth approach (Boston Plan), currently under consideration, is similar to the "hometown" plan, except that it would exclude the minority community from its day-to-day operation.

Imposed Plans

Of the five existing imposed plans, those in Philadelphia and Washington, D.C. are the oldest and the only ones for which employment data are available. In neither case have the results been encouraging. For example, in Washington, data for June and July, which are peak construction months, show 6 of the 12 skilled trades covered by the plan falling below minimum goals for minority employment under the plan. In Philadelphia, although nearly all second year goals for minority employment were being met as of October 1971, the progress has come about as a result of the use of more than 100 "show cause"* notices and the issuance of one contract debarment order, the first in the history of the Executive order. The massive enforcement activity required indicates that a new approach is called for since the Federal Government does not have the resources to cope with such noncompliance if encountered nationwide.

No plans have been imposed on additional cities in the last six months, partly because of staff limitations and partly because of the development of "bid conditions" as an alternative to the imposed plan approach. There are, however, a significant number of cities which have not developed a "hometown" plan, and for which "bid conditions" may not be a strong enough tool.

Hometown Plans

OFCC has either tentatively or finally approved 38 "hometown" plans. Eighteen of these have been approved in the last six months. In 12 of the 38 cities with such plans, however, the imposition of "bid conditions" applicable to new contracts also has been required. Further, although the success of the plan depends largely on the availability of adequate training, only 13 of the 38 plans have approved training programs funded by DOL, and DOL funds for additional training programs appear to be exhausted.

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* A "show cause" notice is required to be issued by OFCC or a compliance agency when a contractor is found to be in noncompliance with contract compliance standards, and reasonable efforts to negotiate corrective actions prove fruitless. A "show cause" notice requires a contractor to show cause why he should not be debarred or have his contract canceled to take requested steps to come into compliance.

Bid Conditions

Of the 12 instances in which "bid conditions" have been developed, 11 have been required in the last six months and their use is planned in additional cities. The major reason for applying "bid conditions" in an area is the weakness or ineffectiveness of a "hometown" plan.

Proposed Boston Plan

A recently proposed variation of the "hometown" plan is the "Boston Plan," which will consist of an agreement between management and labor in the Boston area, but without the minority community acting as a third party. The agreement will provide for minority employment and training goals and timetables. Consideration of a "Boston Plan" follows a finding by DOL officials that minority participation on administrative committees is impractical. As volunteers, minorities have been unfairly burdened with major responsibility for monitoring compliance with the "hometown" plans, and in some cases they have not been able to commit, on a continuing basis, the necessary time to make the operating committees of "hometown" plans work. While no longer functioning in an administering role, the minority community would still have a role in the development of appropriate goals and timetables, and would receive regular reports of the plan's progress. The plan, however, does not appear to contain adequate assurances concerning the availability of compliance information or guarantees of appropriate OFCC action in response to minority allegations of noncompliance.

Other Construction Efforts

In June 1971, an OFCC policy memorandum, "Compliance in the Construction Industry," was issued to indicate the manner in which the Executive order is to be implemented with regard to construction contracts. This memorandum purports to clarify certain compliance standards, e.g., the nature of proper compliance reviews and the enforcement actions expected to be taken by compliance agencies. Two meetings have been held with the compliance agencies concerning the memorandum but no new agency commitments have resulted.

OFCC has had a "national construction plan" under consideration for more than a year. This plan would establish minority employment goals and timetables for the major skilled construction crafts for every area of the country. By so doing, it would give compliance agencies a clear standard of required compliance, responding to a complaint made by many compliance agencies, e.g , DOD. The proposed plan has been in the Office of the Solicitor, DOL, for more than six months, and no date has been set for its issuance.

Sanctions

From July 1970 through September 1971, 640 "show cause" notices were issued to contractors, 425 of them since this Commission's last report in May 1971. Nine of the 15 compliance agencies issued all the notices since April, with the Department of Housing and Urban Development responsible for more than half of them. In only one case, thus far, have enforcement proceedings resulted in a contractor actually being debarred from future contracts.

While action against several other contractors has gone beyond the mere issuance of a "show cause" notice since May, only one other sanction action has been initiated--a contractor was ordered by the Secretary of Labor to adopt a detailed list of requirements within 30 days or be debarred. OFCC also has referred one case to the Department of Justice for litigation during the last six months.

Since May 1971, there has been one bidder on a construction contract passed over and declared "non-responsible" because his bid failed to include required goals and timetables for minority employment. OFCC estimates that as many as 15 percent of Federal contracts which are cleared (by pre-award compliance review, etc.) are delayed for some period of time until steps are taken by the contractors to come into compliance.

There has been a clear improvement in the number of preliminary sanction actions taken, i.e., "show cause" notices issued and contract awards delayed. Yet during the same period in which 425 "show cause" notices were issued, no contractors were sent the more stringent 10-day debarment letter, and only one was debarred.

The reason advanced for this discrepancy between the use of preliminary and final sanction actions is that once a contractor receives a "show cause" notice he agrees to come to terms with the compliance agency. Until OFCC conducts a review of a substantial number of the agreements negotiated subsequent to the issuance of the "show cause" notices and determines that further sanctions were, in fact, not required, some question will remain as to the efficacy of those agreements.

Racial and Ethnic Data

While the system for the collection and utilization of racial and ethnic data for the contract compliance program still is unsatisfactory, major portions of OFCC's "automated management information system" are scheduled for implementation before the end of 1971. This data bank will contain annual employment report data, affirmative action goals and timetables, utilized training program data, and other compliance operations data. Though a manual system of data collection is still largely in use, OFCC has been able to estimate, from its incomplete data, that Federal contractors have committed themselves to goals of

280,000 minority hires and promotions for the coming year, but OFCC has no data on the success of contractors in achieving past goals.

Evaluation

OFCC has made progress in the areas of:

1. initiating sanction actions;
2. launching a new attempt at monitoring the implementation of the compliance review process;
3. issuing minority employment "bid conditions" for certain construction contractors;
4. increasing significantly the number of compliance reviews.

There is also reason to hope that improved monitoring tools, an automated management information system, and new programs such as the "national construction **plan**," when operational, will result in a more comprehensive compliance enforcement effort.

At the present time, however, the uncertainty of OFCC staffing, and the unknown consequences of the new organization of contract compliance responsibilities in DOL are of paramount concern. Moreover, the inability of OFCC to move beyond experimental monitoring steps, the meager results of construction compliance efforts, and the continued lack of final sanction action also represent significant inadequacies in OFCC's program.

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)*

EEOC Staffing, Training, and Management

The EEOC has recently received authorization for a substantial increase in its staff. Its field staff is expected to nearly double, and when the new staff is hired, trained, and has gained sufficient experience, the capability of EEOC to investigate complaints in a timely manner should be greatly enhanced. Nevertheless, further additions to the staff will be required to meet anticipated increases in the number of complaints filed with EEOC.

Despite the need for new staff to be rapidly and effectively trained and for all existing staff to be retrained in investigations, conciliations, and other compliance activities, the initiation of such training programs has not yet been approved by the EEOC Commissioners.

One significant staff problem recognized by EEOC is the lack of uniformly adequate management skills in its field offices. Measured by differences in the number of cases handled, the quality of investigations, as well as the frequency and comprehensiveness of remedies obtained, there appear to be significant disparities in the management skills applied in various EEOC field offices.

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* EEOC, created by the Civil Rights Act of 1964, administers Title VII of the Act which prohibits employment discrimination based on race, color, religion, sex, and national origin. EEOC has the authority to investigate and conciliate complaints of discrimination, but at present may not secure court enforcement of its findings or issue cease and desist orders to compel compliance.

Despite these disparities and despite the fact that the field staff is rapidly increasing, no adequate system of field operations management information and control has been developed. In recognition of this, the Office of Management and Budget (OMB), in September 1971, requested that EEOC conduct studies of the operation of its field activities.

Priorities for Compliance Activities

The large volume of complaints received militates in favor of the establishment of some priority for the processing of charges. EEOC has given priority attention to three classes of charges for some time: charges resulting from hearings, certain Commissioner charges which have potentially wide impact, and cases of national importance (national impact cases) developed with a view toward the institution of legal proceedings. OMB has recently requested that EEOC study the question of whether a formal system of priorities would increase its effectiveness. The study is to be completed within 6 months.

In May 1971, EEOC initiated a new policy of allocating resources among several activities on the basis of two priorities: (1) the maximum possible elimination of systemic discrimination; (2) the resolution of the maximum number of charges feasible. The new resource allocation has been fixed at no more than 10 percent for national impact cases, no more than 30 percent for regional impact cases, and not less than 60 percent for regular charges of discrimination.

The allocation of 40 percent of the major portion of EEOC funds for cases of major importance is a significant step toward the establishment of formal priorities. The new allocation system, however, has not been fully implemented, nor has its effects been significant to date. In addition, it is not clear at this point how the two priorities for allocating resources integrate the existing complaint processing priority system.

Complaint Backlog

Without question the most serious failure of EEOC has been its inability to reduce its backlog of unresolved charges. The number of charges pending at all stages has increased by 25 percent in only 6½ months. Thus, as of September 1971, there were 23,642 outstanding charges.

The one attempt by EEOC to deal with the backlog problem was not entirely successful. A special backlog procedure was instituted in February 1970 and applied to 7,195 charges defined as "backlog" charges. While nearly all of those backlog charges were processed, only 20 percent were resolved in a satisfactory manner. This compares unfavorably with the usual proportion of charges resolved in a satisfactory manner, which is more than twice this figure. Moreover, in view of the EEOC Chairman's statement that he believes that 80 percent of the charges made to EEOC are valid, the 20 percent rate of satisfactory resolution of backlog charges seems grossly inadequate.

It does not appear that new methods or approaches are actively being considered to remedy this situation. EEOC is not presently considering such remedial action as developing streamlined complaint handling procedures, requesting supplemental funds from Congress, or obtaining assistance from other agencies for purposes of mounting a crash program to eliminate the backlog.

Enforcement Activities

EEOC's enforcement activities have been limited to: (1) referral of cases to the Department of Justice for the institution of "pattern and practice" lawsuits under Section 707 of the Civil Rights Act of 1964; (2) intervention as an *amicus curiae* (friend of the court) in private employment discrimination suits filed under Section 706 of the Civil Rights Act of 1964; and (3) action to uphold the commitments contained in an EEOC conciliation agreement.

Referrals to the Department of Justice

A total of 26 EEOC cases were accepted for referral by the Justice Department in Fiscal Year 1970. Only two of these resulted in the filing of a lawsuit by the Department. In Fiscal Year 1971 only one EEOC case was accepted for referral by the Department of Justice.

Intervention as *Amicus Curiae*

More than 500 cases of *amicus curiae* intervention by EEOC were recorded in Fiscal Year 1971. Courts have increasingly required the parties to negotiate a conciliation agreement under the auspices of EEOC, the agreement then becoming the order of the court. EEOC participation in private litigation under Title VII is of special value. EEOC possesses much greater resources than are available to private attorneys. In addition its staff has special expertise concerning employment discrimination which can be of assistance to the court and the litigants. This aspect of EEOC's enforcement activities is rapidly expanding. It is limited, however, to those instances where private parties initiate a court action.

Enforcement of Conciliation Agreements

The enforcement of its more than 5,000 conciliation agreements has been granted a low priority by EEOC. If a blatant violation is reported to EEOC, usually by an affected charging party, an effort is made, through negotiation, to correct the situation and obtain a new agreement. No periodic compliance reviews, however, have been made to monitor implementation of the agreements, and none are contemplated. EEOC has not initiated a suit to test its authority to judicially enforce its conciliation agreements.

Affirmative Action

There are at least three types of distinguishable affirmative activities in which EEOC can engage: Commissioner charges, hearings, and national impact cases, including EEOC interventions before Federal regulatory agencies.

Commissioner Charges

In Fiscal Year 1971 there were 160 Commissioner charges filed, 81 more than were filed in Fiscal Year 1970. In the first quarter of Fiscal Year 1972, 43 Commissioner charges have been filed, 16 are pending before the Commissioners, and 23 more are being drafted.

Commissioner charges fulfill an important function in nearly all EEOC affirmative or initiatory actions because they can precipitate an official EEOC investigation in instances where no complaint has been filed. Thus, information developed at EEOC hearings can result in Commissioner charges in the absence of complaints. For example, as a result of the last EEOC public hearing, held in Houston, Texas in June 1970, nearly 100 Commissioner charges were filed. The variety of uses which can be made of Commissioner charges suggests the need for a study to determine what impact they have and how they may be applied more effectively. No such study by EEOC has been made nor is planned, however.

Hearings

Hearings have become a useful feature of EEOC activities but have been used sparingly. A public hearing on discrimination in the gas and electric utility industries is scheduled to be held in Washington, D. C., in November 1971. That is the first hearing since June 1970. No other hearing has been scheduled for Fiscal Year 1972.

The value of a hearing is not limited to the publicity it produces nor the number of resulting Commissioner charges filed. EEOC followup to the Houston hearing produced several significant successful conciliations and the initiation of a number of private suits involving "massive amounts of backpay", which have opened many job opportunities to minorities and women. EEOC technical assistance activities in Houston following the hearing further assisted minorities in obtaining employment.

National Impact Cases

EEOC has formulated two separate approaches to dealing with matters of national impact, such as attacking employment discrimination on an industry-wide basis. Its first approach has been to conduct extensive investigations of the employment practices of some of the Nation's largest employers. In appropriate situations EEOC develops multiple charges and class charges, involving massive documentation and proposed comprehensive remedies. Another avenue of attack on industry-wide patterns of discrimination has been EEOC's activities before the Federal regulatory agencies. It has intervened in a rate making case before the Federal Communications Commission and has been involved in other matters before the Interstate Commerce Commission, the Federal Power Commission, and the Civil Aeronautics Board.*

These actions offer new opportunities for the effective use of the agency's limited resources. The major restriction on these affirmative activities is that success depends upon EEOC's ability to make resources available when suitable issues arise. EEOC must await the appropriate time to confront major corporations or independent regulatory bodies. Each instance requires the expenditure of considerable EEOC staff resources and time to amass the documentation necessary to assure success.

Discrimination Against Women, American Indians, and the Spanish Speaking

EEOC has reported that it recently funded two State and one city Fair Employment Practices Commission (FEPC) to conduct investigations and enforcement proceedings against selected companies which appear to discriminate against women. EEOC also has funded a State FEPC this year to conduct a voluntary compliance project involving Indians. No other special efforts have been made by EEOC to cope with the long ignored problems of these groups. In addition, no special projects directed or funded by EEOC and aimed toward the special problems of the Spanish speaking appear to have been initiated, and none are planned.

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* A specific example of activity in this area is EEOC's participation in a general rule making proceeding initiated by the Interstate Commerce Commission (ICC) to examine the extent of employment discrimination practiced by its regulatees (trucking companies and railroads) and to determine what actions the ICC should take to deal with such discrimination.

Union Discrimination

The record of EEOC's effort to combat union discrimination does not begin to match the attention it has devoted toward achieving employer compliance. Unions were studied in a limited way during the Houston hearing, but generally EEOC resources have not been allocated to any special effort to eliminate discrimination by labor unions.

As a part of EEOC's regular complaint handling procedures, some comparatively far reaching concilation agreements with unions have been secured, but these, EEOC concedes, have been few. The EEOC's procedure was to ask national AFL-CIO civil rights personnel to resolve union complaints made to EEOC. This has been rescinded recently and discussions are underway to develop a new procedure. In short, EEOC does not have a systematic program for dealing with union discrimination, nor is one in the process of development.

Jurisdiction and Responsibility

This Commission has recommended legislation to provide EEOC with cease and desist powers; to expand its coverage to all employers and unions with eight or more employees or members and to State and local government employment; to transfer the responsibilities of the Office of Federal Contract Compliance (OFCC) in the Department of Labor to EEOC; to transfer Section 707 litigation responsibilities of the Department of Justice to EEOC; and to transfer the responsibility of the Civil Service Commission for equal employment opportunity in Federal employment to EEOC.

EEOC, which previously opposed authority to issue cease and desist orders, now favors it.* EEOC, however, remains strongly opposed to the transfer of OFCC and moderately opposed to obtaining Section 707 suit authority and responsibility for Federal equal employment opportunity. EEOC's reasons for this opposition to change in these areas are mainly that they would cause administrative problems.

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* EEOC states that its strongest enforcement powers would consist of self-enforcing cease and desist orders coupled with temporary litigation authority which would be applied to those cases already received by EEOC, and which would be continued until the machinery required for the application of cease and desist authority is established.

Charges Deferred to State or Local Fair Employment Practices Commissions (FEPC)

In Fiscal Year 1970, 4,201 of the 20,122 charges EEOC received were deferred to a State or local FEPC; in Fiscal Year 1971 the number of deferred charges increased to 8,516. Yet only 18 percent of the charges deferred in Fiscal Year 1971 were satisfactorily resolved by State and local FEPCs. The deferral process has generally meant additional delay to the complainant, without a countervailing benefit in the form of increased chances for favorable settlement. EEOC, however, has taken some actions to help upgrade the operations of State agencies, e.g., grants to State FEPCs to conduct comprehensive investigations of selected important industries.*

Intra-Governmental Coordination

The prospect for improved coordination among OFCC, EEOC, and the Department of Justice appears to have declined. The OFCC-EEOC discrimination case referral system, under which OFCC refers all complaints involving joint jurisdiction to EEOC for investigation, may soon be revised or rescinded. Meetings of the Interagency Staff Coordinating Committee, consisting of officials of OFCC, EEOC, and Justice, are rarely held and the subjects discussed relate only to ad hoc problems.* Joint long-range planning and the development of coordination systems are no longer discussed. EEOC states, however, that its own relations with a number of other agencies, e.g., certain contract compliance agencies and several regulatory agencies, have improved.

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* Yet, in at least one State-- New Mexico--the FEPC may well be forbidden, by a 1970 State law, to accept Federal grants from EEOC to improve State compliance operations. More serious is a court suit in which a State contends that once a case is deferred to it by EEOC the State retains jurisdiction, not just for sixty days, as is presently the rule, but until the State concludes it action. If such a position is upheld, EEOC's efforts will be significantly hampered.

The lack of coordination among OFCC, EEOC, and the Department of Justice was one reason this Commission recommended in its report of October 1970 the transfer of OFCC to EEOC and the transfer of Section 707 suit power from the Department of Justice to EEOC. It appears that this reason is even more pressing today since existing mechanisms of coordination appear to have atrophied.

Evaluation

EEOC has made some noteworthy progress in several areas, but serious impediments to effective operation of the equal employment opportunity program remain. Progress has been made in four major areas:

1. Increase in staff.
2. Development of a priority system for the allocation of resources.
3. Increased use of Commissioner charges and other initiatory activities.
4. Increased involvement in private Section 706 discrimination suits as amicus curiae.

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* The two major topics now under discussion are joint agreement on industry-wide relief in the trucking industry and the implications of "hometown" minority construction employment plans in several pending EEOC and Department of Justice cases.

In other critical areas EEOC remains significantly deficient. EEOC does not have an adequate program for the training and management of staff. A system of integrated priorities has not been developed. It has not adopted sufficient procedures to eliminate its increasing backlog of charges. The enforcement of EEOC's conciliation agreements has been seriously neglected. Effective new programs have not been created to deal with discrimination against women, American Indians, and the Spanish speaking, nor with the discriminatory practices of labor unions.

One problem which permeates all EEOC activities is its lack of enforcement powers. Until this crucial legislative deficiency is corrected,EEOC's ability to effectively deal with the enormous issue of employment discrimination will remain limited.

As EEOC's workload mounts and its staff increases, all of these unresolved problems will loom even larger as factors affecting its potential effectiveness. For the continuing viability of the agency these impediments to EEOC success must be addressed promptly and vigorously.

HOUSING

Department of Housing and Urban Development

General Services Administration

Veterans Administration

Federal Home Loan Bank Board

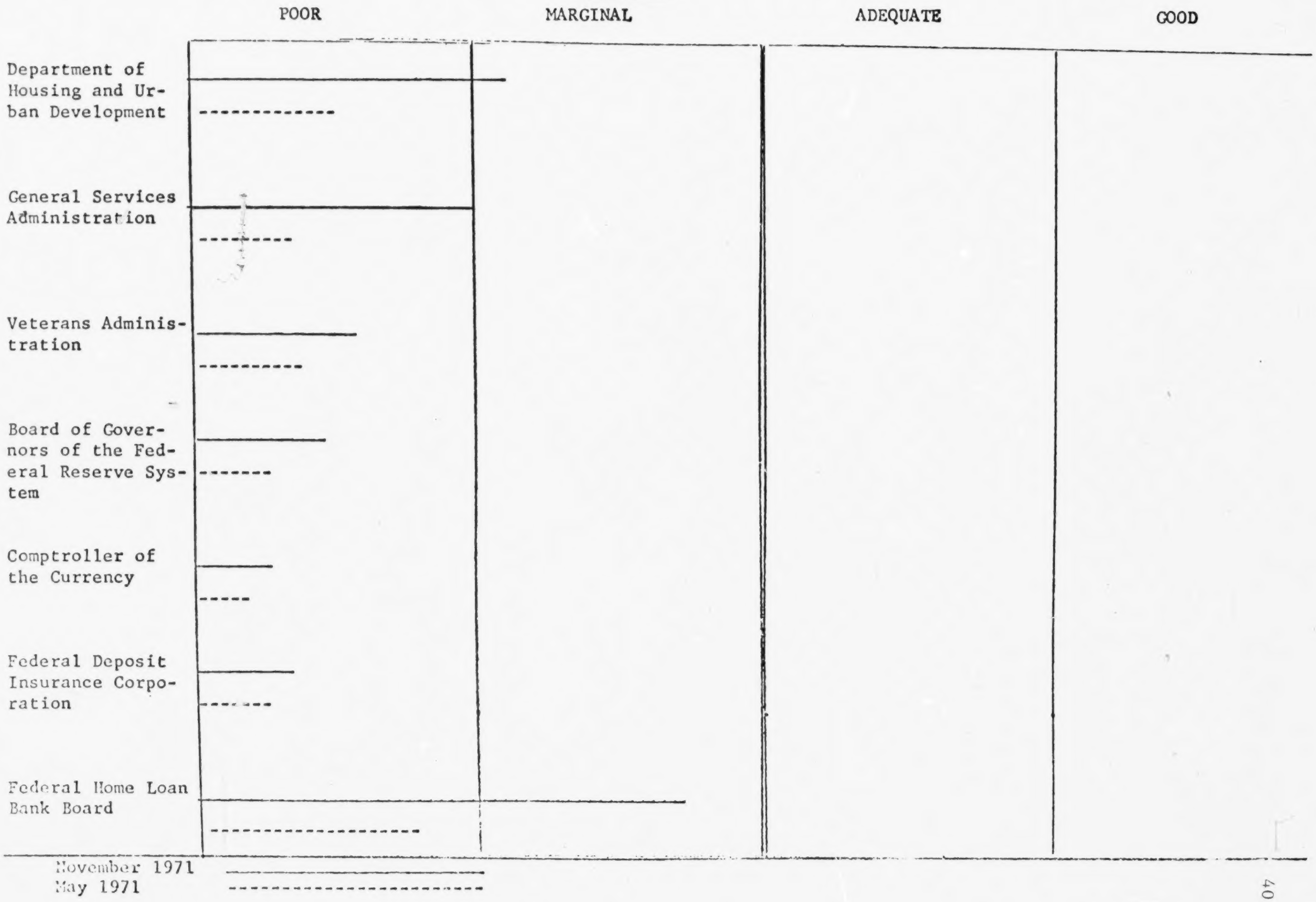
Comptroller of the Currency

Board of Governors of the Federal Reserve System

Federal Deposit Insurance Corporation

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

HOUSING



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Staffing and Organization

HUD continues to have a staff grossly inadequate to deal with the complaints it receives under Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and Executive Order 11063. A total field staff of 42 people handles the full volume of Title VIII complaints for the entire country. HUD has stated that the average time taken to process a complaint is between five and six months. This Commission, however, in referring complaints to HUD, has noted at least one instance in which nearly a year passed from the date of the original filing of a complaint to its conciliation.

There is an imbalance in the allocation of staff responsibility within the Equal Opportunity Office, which will become more severe after the implementation of numerous recently issued policies. For a balanced division of staff based on the functions assigned to them, HUD should have a substantially larger staff in the Offices of Housing Opportunity and Assisted Programs, than in Contract Compliance and Employment Opportunity. At the present time in the Regional Offices, there are 79 staff members assigned to Housing Opportunity and Assisted Programs combined, while there are 83 staff members in the Economic Opportunity (Contract Compliance, Minority Business, and Employment) Office. Yet the former staff have responsibility for overall enforcement of Title VIII, Title VI, and Executive Order 11063, as well as for rendering technical assistance to State, local, and other fair housing organizations.

Complaint Processing versus Compliance Review

Title VI

In May 1971, HUD finally issued revised regulations which transferred official responsibility for compliance and enforcement activities under Title VI of the Civil Rights Act of 1964 to the Office of the Assistant Secretary for Equal Opportunity. And in September--seven years after Title VI was enacted--the Equal Opportunity Office issued instructions (HUD Circular 8000.2 - 9/1/71) and a Handbook (Title VI - Equal Opportunity, 8000.3, Sept. 1971) for handling complaints and compliance reviews of all HUD programs covered by Title VI. Prior to this time, no such reviews had been undertaken except in connection with complaint investigations. HUD has never in the history of the law terminated any funds because of discrimination in violation of Title VI.

Title VIII

As of the end of 1970, HUD had received a total of more than 2,000 complaints under Title VIII, the Federal Fair Housing Law. Since July it has been conducting an experimental fair housing advertising campaign in its Philadelphia region, directed toward increasing public awareness of the existence of discrimination in housing and of the remedies provided under Title VIII of the Civil Rights Act of 1968. HUD states that this has greatly increased the volume of complaints in that region. In July and August of this year, it received 187 percent more complaints (109) than in the same period in 1970 (38). Yet, despite the increase in the number of complaints received, there has been no comparable increase in staff to process these complaints.

As of the end of 1970, HUD had referred approximately 270 complaints (about 13 percent of the total number received) to State and local fair housing agencies. Yet to date, more than three years after the passage of the Act, no standards or instructions have been developed to determine which State and local agencies have sufficient staff and powers adequate to handle Title VIII complaints.* Nor does HUD usually follow up or recall complaints referred to State and local agencies. According to one HUD official, this is rarely done because of the backlog of complaints that exists both within the State and local agencies and within HUD itself.

The total number of complaints in which HUD undertook conciliation in 1969 and 1970 is 562, approximately 28 percent of the total number received and about half of those in which HUD had completed an investigation. Of these, 318 had been successfully resolved by the end of 1970. This is a little over half of the number which reached the conciliation stage, and only about 15 percent of the total number of complaints received. HUD contends that "with a staff of 42 nationwide handling Title VIII cases, it is impossible to initiate the conciliatory process immediately on the completion of a Title VIII investigation. Accordingly, a longer time span between investigation and conciliation decreases the chance of a successful conciliation."

HUD stated in April 1970 that it intended to undertake community compliance reviews. Such reviews would entail visits by HUD field staff to a community where they would conduct an investigation to determine the extent to which discriminatory housing practices are occurring. Complaince reviews would be an efficient way to enforce Title VIII, compared with the present case-by-case method of handling complaints which requires a large staff and accomplishes little in the way of altering broad patterns and practices of discrimination. Yet, as of October 1, 1971, HUD had conducted no such compliance reviews and had issued no internal guidelines to prepare staff for such investigations. It has stated that there will be an issuance on compliance reviews "soon." Meanwhile, it continues to rely on the processing of complaints.

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*HUD states that draft proposed standards will be published in the near future.

Racial Data in HUD Programs

HUD now collects racial and ethnic data on participation in all its programs. As yet, these data have not been tabulated and broken down by region or by market area. HUD has put together a national preliminary analysis based upon a sampling of data collected for the month of July 1971. This analysis shows extensive segregation in important HUD programs and indicates that extensive civil rights program compliance reviews are desperately needed.

For example, the data show that under HUD's basic home mortgage program, Section 203(b), only 3.5 percent of new homes are being purchased by black families. This is exactly the same percentage as was found by FHA in its 1967 survey of FHA-insured subdivisions. The data for the Section 235 program, Homeownership for Low- and Moderate-Income Families, show that all new 235 homes constructed in "blighted" areas are being purchased by black families, while 70 percent of new 235 homes constructed outside "blighted" areas are being purchased by white nonminority families. The data for the Section 236 program, Rental Housing for Low- and Moderate-Income Families, show that two-thirds of the units are occupied by white nonminority families and that 120 out of 389 projects reporting (30 percent) are totally segregated by race and ethnic group. Eighty projects are all white, 38 are all black, and two are all Spanish American. Of the 269 projects remaining, only 100 are more than 15 percent integrated. That is, 142 projects are more than 85 percent white and 27 projects are more than 85 percent black.

HUD has not yet indicated the extent to which its racial data will be made available to the public. Nation-wide data on multifamily occupancy and home mortgage programs will be published, hopefully, by early 1972. But interested local groups will require the data on a local community basis. HUD officials have indicated some reluctance to furnish this information, although community project-by-project racial data are published annually for the public housing program. If HUD's racial data are to be used to identify discriminatory marketing and tenant assignment patterns, it is essential that the data be broken down on a local project-by-project and subdivision-by-subdivision basis.

New Affirmative Action Policies

Advertising Guidelines

In May 1971, HUD released guidelines for nondiscriminatory real estate advertising. These guidelines suggested key words to be avoided in ads, and included such positive recommendations as the use of an equal housing "logotype" and the posting of a nondiscriminatory advertising policy by publishers. The guidelines did not address more subtle forms of discrimination in advertising, such as the selective use by brokers of equal opportunity statements or "logotypes" in advertisements aimed only at minority buyers. Moreover, the proposal indicated that HUD will take into account adherence to the voluntary guidelines in investigation of individual complaints, but it avoided the stronger incentive of providing that adherence would be a factor considered in full-scale Title VIII compliance reviews.

Affirmative Fair Housing Marketing Guidelines

In June 1971, HUD issued proposed Affirmative Marketing Guidelines applicable to developers of new FHA subdivisions, multifamily projects, and mobile home parks. The guidelines would require FHA applicants to adopt affirmative programs which will "typically" involve nondiscriminatory advertising, recruitment of minority salespersons, and other techniques for assuring marketing of housing to all segments of the community.

In October, revised proposed guidelines were issued in regulation form. They expanded coverage to include sponsors of five or more units, rather than the earlier 25 or more. Given the fact that the average subdivision contains 17 housing units, this constituted an important improvement.

The new regulations also make clear that the applicant would continue to be responsible for an affirmative marketing program even where he contracts marketing responsibility to another party.

The requirements, however, would apply only to projects developed after the effective date of the regulation. Thus thousands of completed federally-assisted units, many still subject to FHA regulations, would be excluded. Also, requirements would cover only a sponsor's FHA-insured projects but would not extend to any conventionally financed housing which that same sponsor may develop.

While the guidelines would call for programs which are affirmative in nature, the requirement regarding minority employment calls only for the maintenance of a "nondiscriminatory hiring policy," and not an affirmative program to assure that the sponsor's staff includes minority group persons. In addition, the marketing guidelines fail to require the establishment of goals and timetables for achieving nondiscriminatory occupancy.

The guidelines also require that FHA Area and Insuring Offices provide interested parties with periodic lists of proposed projects "on which commitments have been issued." It is not clear, however, whether this requirement would include conditional as well as firm commitments. In addition, there is no requirement that lists of sponsors having fund reservations under Section 235 are to be made available. The proposed regulations are also unclear regarding the point at which a developer must submit this affirmative marketing plan.

This should also be before the firm commitment stage and in fact should be built into the first part of the process when the developer is still seeking construction funds.

Finally, the section of the regulations concerning "compliance" fails to spell out a step-by-step procedure for application of sanctions. This is important so that members of the public, such as potential buyers and mortgage lenders, can be made aware of the developer's possible loss of FHA insurance. Comments on these proposed regulations have been submitted and are under review by HUD.

Project Selection Criteria

In June 1971, HUD issued new proposed Project Selection Criteria which were extensively reviewed and revised in October 1971. They establish a rating system for applications for low- and moderate-income housing projects. This rating system employs, in the revised version, eight criteria (seven for the Section 235 program) which determine priorities for the approval of competing project applications. Applications are rated as either "superior," "adequate," or "poor" in each of the applicable criteria. A "poor" rating in any one criterion would result in the disapproval of the project application.

The most important criteria are those dealing with the site selection process: (1) Need for lower-income housing; (2) Minority housing opportunities; (3) Improved location for lower-income families; and (4) Relationship to orderly growth and development. Yet all of these criteria possess a common failing--they do not provide means for overcoming a metropolitan pattern of inequitable subsidized housing distribution. The criteria would be applied on a project-by-project basis which fails to consider individual applications in the context of an overall plan for metropolitan-wide distribution of subsidized housing. It would seem that HUD's current funding process, which, because of budgetary considerations, proceeds on a sporadic basis, would lend itself well to metropolitan-wide analysis and selection. However, the criteria make no provision for such a procedure.

In addition, the criteria fail to confront the important barrier of restrictive land use practices. There are no provisions for location of subsidized housing in the large number of suburban communities which maintain large lot zoning or prohibitive building codes which restrict construction of low-cost housing.

Individual criteria contain specific drawbacks which would further detract from the effectiveness of the proposed regulation. The important criterion of "minority housing opportunities" contains two significant loopholes. First, a "superior" rating is possible for a proposed project if it is located in or near a racially concentrated area which is part of an urban renewal or model cities area and in which housing " is expected to serve a wide range of income levels and a racially varied population." History would instruct that urban renewal areas of that description are rare and in fact the recent Shannon case, in which HUD approval of a low-income rent supplement project in a ghetto area was held unlawful, involved the location of federally subsidized housing in an urban renewal area in Philadelphia.

The same criterion also provides for an "adequate" rating for a proposal to be located in a racially concentrated area when "it is necessary to meet overriding housing needs which cannot otherwise be met in that housing market area." The evaluation guidelines for HUD staff suggest that such "need" might be demonstrated by unworkable land costs or growing racial concentrations in other acceptable areas or by the existence of strong "cultural, social, or economic ties" in the proposed site area. Absent clear instructions on the process by which such determinations are to be made, the potential for abuse and for continued housing segregation is high.

The foregoing findings constitute only examples of the limitations now present in the Project Selection Criteria. The principle of such criteria, however, is an important one, which the Commission strongly supports. But full endorsement must await a thorough reexamination directed toward removing a variety of substantive problems. For example, it is unclear what role the Equal Opportunity staff will play in the project evaluations. As presently constituted the criteria could potentially produce a negative result--actually increasing the confinement of subsidized housing to city centers. Considerable effort must be expended to restructure the proposed Project Selection Criteria into a vehicle for the substantial expansion of low- and moderate-income housing opportunities on a metropolitan-wide basis.

Proposed New Procedures

Project Selection Systems

HUD states that it is in the process of drafting Project Selection Systems for its Community Development programs. These will provide priority ratings on applications for funds for each program, based on HUD's goals for that program and with some emphasis on equal opportunity in housing. A possible model for these criteria is the Water and Sewer Project Selection System issued by HUD in June 1971. This policy includes the awarding of points when rating applications for such factors as the existence of low- and moderate-income housing in the project area. There is no provision, however, for a nondiscriminatory housing plan in these criteria. HUD states that the new Project Selection Systems will be published for comment in the Federal Register in the near future. As of the publication date for this report, no new procedures have been issued.

Tenant Selection

HUD states that it is also in the process of preparing tenant selection criteria to govern lower-income rental housing. A tenant selection policy has been long awaited; as long ago as April 1970, a HUD Assistant Secretaries Task Force was in the process of revising the existing tenant assignment policies for public housing and developing a tenant selection policy to apply to all federally assisted rental housing. One year later in April 1971, HUD stated again that a new tenant assignment policy was "under review." To date, HUD has still not issued these procedures, although it states that it intends to publish new criteria for comment in the near future.

Planning Requirements

In his June 11 statement on Equal Housing Opportunity, the President referred to HUD's planning requirements in connection with many of its Community Development programs. The President indicated that these requirements served to assure that recipient communities were working toward the goal of open housing. HUD has announced no new procedures for implementing the intent of the President's statement. HUD's present planning requirements make no adequate provision for assuring that housing is available on a nondiscriminatory basis. When reviewing local community plans, HUD staff are not required to make use of racial data collected in HUD programs or racial data provided by the 1970 Census.

The "workable program," which is HUD's planning requirement for most urban renewal programs, concentrates only on a need to provide adequate low- and moderate-income housing in the recipient community. A review of the Workable Program Handbook (HUD-MPD 7100.1.a September 1970) reveals no mention of minorities except in relation to low-income housing needs. There is no sign of any requirement that a community must include the eventual elimination of a racially dual housing market as part of its plan.

The housing element required of recipients under HUD's major planning program--Comprehensive Planning Assistance--more nearly approaches the President's requirement. It requires as a goal the elimination of the effects of past housing discrimination and the provision of safeguards against future discrimination. Action toward this goal must be spelled out in the Overall Program Design submitted by the applicant. However, the elimination of the racially dual housing market is not a required activity. Rather, it is suggested that the recipient may, on a voluntary basis, conduct activities with respect to "special problems of minority groups in securing adequate housing" and/or "the impact of current and proposed housing projects on patterns of racial concentration."

HUD's major planning tool for the private market--HUD market analysis--does not provide information on racial and ethnic residential patterns in the surveyed market area. Neither does it include the assessed community need to open up the housing market to all families on a nondiscriminatory basis. HUD states that these omissions may be corrected at some time in the future.

Interagency Cooperation

General Services Administration (GSA)

In June 1971 HUD and GSA announced an agreement to cooperate in assuring the availability of low- and moderate-income housing on a nondiscriminatory basis as a condition for location of Federal installations. The agreement provides that GSA will, at the earliest possible date, notify HUD of a proposed site and that HUD will investigate and report to GSA on the availability of such housing. If the investigation shows a lack of adequate housing or if the housing is not open to minorities, GSA may still select the site if both agencies develop an affirmative action plan to insure that an adequate supply will be made available before the facility is occupied or shortly thereafter.

HUD has not yet issued any internal operating procedures to implement its agreement with GSA. HUD states that such procedures are being drafted and will be released soon. According to HUD, "no investigations have been completed to date" pursuant to the agreement. Although GSA informed this Commission that it has notified HUD of four proposed sites for Federal installations, the HUD Regional Offices having jurisdiction over the areas in which these installations are to be located were contacted by this Commission and professed no knowledge of the GSA notifications.

Federal Financial Regulatory Agencies

In June 1971 the Federal Financial Regulatory Agencies, in conjunction with HUD, sent out a questionnaire to supervised lenders concerning their racial and ethnic policies and practices relating to mortgage lending.

Approximately 18,500 questionnaires were mailed and 17,400 were returned. HUD is in the process of preparing a preliminary analysis of the results of the survey but such an analysis was not available at the time this report was completed for publication. Several of the Regulatory Agencies have done internal preliminary analyses and they indicate that the questionnaires revealed instances of failure to lend in minority neighborhoods and instances where banks admitted considering race as one of the factors in evaluating loan applications. HUD indicates that a report based on its preliminary analysis will be released publicly in the near future.

As yet HUD has not planned the next step in establishing equal housing opportunity procedures for mortgage lending institutions. HUD only indicates that the results of the questionnaire will be used as a basis for developing with Regulatory Agencies "a total affirmative action program."

Evaluation

The Department of HUD has recently issued a number of proposed policies and procedures relating to equal housing opportunity. These long-awaited policies cover a wide range of subject areas and have great potential for improving HUD's enforcement activities. They include (1) guidelines for nondiscriminatory housing advertising, (2) affirmative marketing requirements for developers of FHA-insured housing, (3) project selection criteria designed to prevent the concentration of subsidized low- and moderate-income housing in minority areas, and (4) an agreement with the General Service Administration to cooperate in assuring the availability of low- and moderate-income on a nondiscriminatory basis as a condition for the location of Federal installations. Although most of these are still in the proposal stage and have serious defects and omissions, they are at least a concrete beginning toward meeting HUD's responsibilities under civil rights laws pertaining to housing.

In spite of the attention now being directed toward affirmative action in HUD programs, HUD's Office of Equal Opportunity continues to rely on the processing of individual Title VIII complaints as the primary Title VIII enforcement mechanism. HUD does not have adequate staff to handle even the present number of complaints it receives. An average of five months elapse between the receipt of a complaint and its final conciliation. Moreover, very few complaints which HUD originally receives actually end up in the conciliation process. Nevertheless, HUD continues to delay in the issuance of procedures for conducting community compliance reviews which could uncover the total range of discriminatory housing practices occurring in an investigated community rather than the exact facts of one individual discriminatory act.

HUD officials concede that they do not have adequate staff to handle the present workload. Yet, in spite of the new duties which they are assuming pursuant to these announced new policies, there are no plans for increasing HUD's equal opportunity staff in the near future. In the meantime, the present staff is inequitably distributed with a disproportionate number allocated to the monitoring of equal employment, minority business, and contract compliance requirements.

The fact that HUD now collects racial and ethnic data for all its programs offers tremendous potential for the monitoring and enforcement of equal opportunity in Housing and Urban Development programs. HUD is now in a position to evaluate the impact of its programs on minority housing conditions. The data will readily indicate areas which require immediate compliance reviews and release HUD from dependence solely on the inefficient and time-consuming individual complaint process.

In fact, a preliminary analysis of racial data which HUD has already collected indicates that there are serious problems of racial and ethnic segregation in current housing programs subsidized by HUD.

GENERAL SERVICES ADMINISTRATION (GSA)

Equal Housing Access for Federal Employees

On June 11, 1971 President Nixon issued a Statement on Federal Policies Relative to Equal Housing Opportunity. The President noted that he had ordered all Federal agencies concerned with Federal installation site selection to consider the availability of low- and moderate-income housing and to "take specifically into account whether this housing is in fact available on a nondiscriminatory basis."

Agreement Between GSA and the Department of Housing and Urban Development (HUD)

On June 14, 1971 GSA and HUD announced an agreement to cooperate in assuring the availability of low- and moderate-income housing on a nondiscriminatory basis as a condition for location of Federal facilities. The agreement provides that GSA will, at the earliest possible time, notify HUD of a proposed site and HUD will investigate the site and report to GSA on the availability of such housing. If the investigation shows that there is insufficient low-cost housing or that housing in the area is not open to minorities, GSA may, only select the site if an affirmative action plan is developed to insure that these situations will be corrected before the facility is occupied or shortly thereafter.

Implementation of the Agreement

Neither GSA nor HUD has yet issued any internal operating instructions to implement the June Agreement. Although a series of joint meetings have been held between HUD, GSA and OMB, no cooperative procedures have yet resulted. GSA states, however, that it has distributed copies of the agreement to all its regional offices, held "training sessions" for regional staff, and brought to Washington the Regional Directors of the Public Buildings Service to explain the agreement to them. In addition, GSA published in the Federal Register of November 3, 1971, amendments to its regulations governing Public Buildings and Space, Acquisition of Real Property, and Assignment and Utilization of Space. These generally restate the terms of the "Memorandum of Understanding" in binding form, but do not contain any amplification of the agreement, or any specific instructions to staff.

Action Taken

Since the agreement was adopted, GSA states that it has notified HUD of four sites proposed for Federal installations. GSA told the Commission that it does not know what action HUD has taken on these proposed sites. HUD told the Commission that it has not yet completed any investigations under the agreement. Three HUD Regional Offices contacted by Commission staff had no knowledge of the GSA notifications of proposed installations sites in their areas.

Evaluation

The agreement between GSA and HUD regarding a Federal installation site selection policy could provide an effective mechanism to assure the availability of low- and moderate-income housing on a nondiscriminatory basis in the area of proposed sites for Federal installations. The need for such a mechanism has been particularly pressing because Federal sites are increasingly being proposed in suburban areas where there is a lack of such housing.

Unfortunately, however, as of November 1 -- nearly five months after the agreement was adopted --no procedures exist for implementations, although both HUD and GSA state that they will issue internal operating instructions in the near future. The GSA regulations issued this month merely restate the details of the agreement but do not contain instructions to staff on their implementation.

One of the key sections of the agreement deals with the development plan designed to assure open housing and/or future provision of needed low-and moderate income housing in the area. GSA testified at the Commission's Hearing in June 1971 that it interprets this to apply only to housing for employees of the planned facility. In addition, GSA was unwilling to spell out the methods that would be used to "remove obstacles to the provision of such housing, when such obstacles exist" in a community and to assure the construction of the needed housing there. The Commission believe that the potential effectiveness of the agreement is drastically limited by GSA's restricted interpretation of its responsibility.

VETERANS ADMINISTRATION (VA)*

Organization and Staffing

The Veterans Administration maintains a very small staff to carry out equal opportunity requirements in its Loan Guaranty Program. At its June Hearing in Washington, D.C., the Commission learned that only two professional civil rights staff members were expected to monitor the entire VA loan guaranty program carried out in 57 regional offices and amounting to more than $3 billion in guaranteed mortgage loans annually. The Commission recently learned that there is now only one professional staff member with this responsibility since the second member has retired and his position has been eliminated. Although VA assured the Commission that the position will be reestablished, no date was given for when this will occur.

Complaint Processing

Like the Department of Housing and Urban Development, the VA relies on the complaint process to enforce the fair housing law. However, the VA has received only five (5) complaints of discrimination since 1969. VA has no organized method for informing veterans of their right to complain of discriminatory treatment under the VA guaranteed loan program. The only effort made in this direction is the availability of two printed pamphlets which a veteran may pick up at a VA field office. The pamphlets explain the VA program and include brief sections with information on the civil rights laws pertaining to housing.

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* The VA administers a loan guaranty program similar in function to FHA mortgage insurance programs. The benefits of VA programs, however, are available only to veterans.

Collection of Racial and Ethnic Data

The VA presently collects racial and ethnic data in both its loan guaranty program and its acquired property program.* The data for the acquired property program show both the racial or ethnic group of the purchaser and the racial or ethnic composition of the neighborhood where the property is located. The VA informed the Commission that as of June 30, 1971, 29 percent of all acquired properties sold during the preceding quarter were purchased by black families and seven percent were purchased by Spanish American families. However, VA did not furnish corresponding data regarding the racial or ethnic character of neighborhoods, stating that the locational data is "not readily retrievable." Therefore, there is no way of knowing if the overall figures reflect purchase patterns that are lessening or contributing to racial or ethnic segregation. The VA stated that racial and ethnic data for the loan guaranty program are not yet available since its collection was begun only recently. The data for the loan quaranty program will not include information on racial or ethnic composition of neighborhoods.

VA officials state that they intend to use the racial and ethnic data collected to document the degree of participation by minorities in VA's housing programs and to "provide a breakdown of areas in need of concentrated attention in order to gain absolute compliance with fair housing practices." However, VA has not yet adopted procedures for carrying out compliance reviews based upon the racial and ethnic data collected. In addition, it is difficult to understand how compliance reviews can be conducted in the absence of adequate equal opportunity staff.

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* In some cases when a veteran defaults on his mortgage loan, the VA acquires and resells the property.

New Equal Opportunity Policies

In July 1971, the VA amended its regulations to require that any applicant for a guaranteed loan or for other VA housing program benefits must certify that he will not discriminate because of race, color, religion,or national origin in the future sale or rental of the property. Such a requirement has been in effect in HUD programs since 1969. The VA has outlined no procedures for implementing this requirement.

In July 1971, the VA General Counsel issued a legal opinion stating that the VA has authority to require real estate brokers selling VA-acquired properties to practice open housing policies in all their real estate business. Instructions have gone to the field to implement this opinion and "to effect the necessary coordination with other interested agencies." According to the VA, the date of implementation depends upon the "completion of such coordination."

At the Commission's June Hearing, VA officials indicated that they were unsure of VA's authority to require developers not to discriminate in the sale of houses which have a VA commitment to guaranty if the houses are sold to nonveterans. VA now states that the developers' nondiscrimination certification applies to all prospective purchasers, not just veterans. However, VA states that if a certifying broker is found to discriminate in sales to nonveterans, suspension from participation in the VA program will have to be resolved in a "test case."

VA officials indicate that "in principle" they are in agreement with the HUD affirmative marketing guidelines. VA is not promulgating any internal regulations with regard to the marketing of VA guaranteed housing, but it states that "to the extent the (HUD) merchandising guidelines are applicable to subdivision processing, they probably will be adopted as in integral part of our program."

VA also states, however, that "the small number of complaints received by the VA seem to indicate, on the surface, that the VA's home loan program is administered on an equitable basis," although they stated that the subtle nature of discrimination may often discourage complaints. VA officials informed Commission staff that VA will not adopt a change from reliance on complaints to affirmative enforcement of the fair housing law unless HUD does so first.

Evaluation

The VA has taken some steps forward in its adoption of new equal housing opportunity requirements in its guaranteed loan program. It now requires a nondiscrimination cerfiticate from VA-assisted purchasers and has issued a legal opinion regarding its authority to require real estate brokers selling VA acquired properties to follow nondiscriminatory policies in all real estate business. In addition VA now collects racial and ethnic data for its loan guaranty program as well as its acquired properties program and states that the data will be used to determine a need for on-site reviews of compliance with VA equal housing opportunity requirements.

Unfortunately, the VA's staff is totally inadequate to monitor its open housing requirements. The responsibility for civil rights enforcement in a $3 billion dollar loan guaranty program involving thousands of minority veterans is placed on the shoulders of just one professional staff member. The factors of inadequate staff, racial and ethnic data which are not readily retrievable, and an absence of written procedures for conducting compliance reviews for enforcing equal opportunity requirements, taken together, strongly indicate that there is virtually no civil rights monitoring of VA housing programs at the present time. In his June 1971 "Statement on Equal Housing Opportunity," the President stated that the VA will administer its programs "in a way which will advance equal housing opportunity for people of all income levels on a metropolitan area-wide basis." The VA is in a poor position to implement the President's words.

FEDERAL FINANCIAL REGULATORY AGENCIES

FEDERAL HOME LOAN BANK BOARD (FHLBB)*

Questionnaires to Member Institutions

The FHLBB sent questionnaires to approximately 4,608 member institutions in June 1971. These questionnaires were for the purpose of determining current policies of savings and loan associations in making loans available to minorities, and gauging the extent to which discrimination in mortgage lending is a serious problem. As of October 1971, approximately 3,800 questionnaires had been returned. These questionnaires are being tabulated and analyzed by the Department of Housing and Urban Development (HUD).

Racial and Ethnic Data on Loan Applications

The FHLBB, pursuant to a recommendation made by an interagency task force chaired by HUD, has decided to require all insured member institutions to keep on file, for a period of not less than one year, all loan applications which have been disapproved. A special form, which will not go to a Loan Committee, will indicate information concerning race and religion of the applicant. In the event the application is disapproved, comments as to the character and location of the neighborhood in which the property involved is located and the reason for disapproval will be entered by appropriate savings and loan association personnel. In the Commission's view, the keeping of such records will enable FHLBB examiners to detect patterns or practices of discrimination by member institutions.

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* The FHLBB supervises and benefits most of the Nation's savings and loan associations, which are the major mortgage lending institutions. The Board performs three functions with respect to savings and loan associations. It charters Federal savings and loan associations, offers membership in the Federal Home Loan Bank System, and directs the activities of the Federal Savings and Loan Insurance Corporation, which offers the benefits of insurance of accounts to share holders in savings and loan associations.

The Board believes it would be desirable for its sister financial regulatory agencies to adopt a consistent set of regulations. To that end the FHLBB has corresponded with the Federal Reserve Board.

Posting of Nondiscrimination Notices

The FHLBB, pursuant to discussions held by the HUD task force, has decided to require each insured savings and loan association to post a notice in its lobby stating that the institution does not discriminate in mortgage lending and informing the public concerning available remedies and complaint procedures.

Guidance for Examiners

The FHLBB Office of Examinations and Supervision has drafted a revision of its examination manual which, the Office states, will include a new section pertaining to racial discrimination in lending and employment. The Office also has recently conducted a "new man training school" for approximately 50 new examiners. This training included material concerning examiners' responsibilities in the areas of racial discrimination in lending and employment.

Data Collection System

The FHLBB has promised to develop a data collection system to reveal any patterns or practices of discrimination which may exist in home mortgage lending operations. However, the Board indicated that a reliable system will be difficult to design and to implement.

Complaints

The FHLBB knows of only three complaints of discriminatory lending practices since February 1971. These are currently under investigation. Since enactment of the Federal Fair Housing Law in 1968, all of the alleged violations of Title VIII have been revealed through complaints rather than through examinations. The FHLBB hopes that issuance of new instructions to examiners will produce improvements through stimulating and expanding awareness on the part of mortgage lenders.

Requiring Member Institutions to Impose Nondiscrimination Requirements on Builders and Developers

The FHLBB believes that the scope of legal authority is unclear. While it is considering the issue, the Board has not yet taken a position concerning the desirability of legislation for this purpose.

COMPTROLLER OF THE CURRENCY (COC)*

Questionnaires to Member Institutions

Questionnaires were sent to all 4,602 national banks in June 1971. As of October 1971, more than 98 percent of all national banks had responded. Several more responses have been received since then. All responses have been forwarded to HUD for evaluation.

Racial and Ethnic Data on Loan Applications

COC does not now require national banks to collect racial and ethnic data on approved and rejected mortgage applications. The Comptroller is reconsidering its position on this requirement in light of the position taken by the FHLBB.

Posting of Nondiscrimination Notices

The COC does not now require national banks to post nondiscrimination notices in their lobbies. COC believes a public information program might serve a more useful purpose in this regard. The Comptroller and other financial regulatory agencies jointly are considering proposals relating both to the posting of notices and to statements in bank advertising of home mortgage loans. In addition, banks may be requested on a voluntary basis to display a poster developed by the Department of Housing and Urban Development.

Guidance for Examiners

COC considers its present policy of informing examiners of the requirements of Title VIII to be sufficient training for detection of violations. It does not consider specialized procedures necessary, but is willing to consider any that are suggested. To date, COC examiners have not discovered a single violation of Title VIII.

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* The COC serves the function of chartering and regulating national banks. By law, national banks also must be members of the Federal Reserve System and must be FDIC-insured.

Imposition of Sanctions

The COC has not developed procedures for imposing sanctions upon member institutions found to be in violation of Title VIII. The Comptroller's Office believes that existing procedures are adequate for dealing with any violations that may be discovered. On the general issue of actions the COC would take to help implement the requirements of Title VIII, the Comptroller states that he does not necessarily agree with the apparent assumption that these actions fall within the purview of his Office's responsibilities under the Civil Rights Act of 1968.

Requiring Member Institutions to Impose Nondiscrimination Requirements on Builders and Developers

The COC does not favor legislation authorizing it to require national banks to impose nondiscrimination requirements on builders and developers that they finance. In the Comptroller's view, discrimination by builders and developers is the responsibility of HUD and it would not be desirable "to have private institutions contract with each other to obey a law with which compliance is already required." Thus any legislation in this area should be directed toward equipping HUD with improved enforcement powers.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (FRB)*

Questionnaires to Member Institutions

FRB distributed the questionnaires to its member institutions in June 1971. Responses have been forwarded to HUD for analysis. FRB, however, has made its own preliminary analysis, which has revealed that a small number of banks refuse to make loans in neighborhoods or other areas of high minority group concentration. A greater percentage of State member banks indicated that they do consider the racial or ethnic composition of neighborhoods among the factors in determining whether or not to make a loan on particular property.

Racial and Ethnic Data on Loan Applications

The FRB continues to doubt the efficacy or need for requiring member banks to keep racial and ethnic data on mortgage applications and has taken no steps toward adopting this requirement. Instead, the Board would stress procedures to make minority group members increasingly aware of their rights and adequate procedures for dealing with complaints.

Posting of Nondiscrimination Notices

The FRB does not now require member banks to post nondiscrimination noticies in their lobbies. The Board believes there is merit to this proposal and has drafted a policy statement providing for the posting of notices and the inclusion of nondiscriminatory language in advertising for real estate loans. The FRB has discussed this statement with Federal financial regulatory agencies and with HUD and has submitted it to HUD for approval.

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* The FRB supervises 1,147 State chartered banks which are members of the Federal Reserve Board. National banks, by law, must be members of the Federal Reserve System (FRS), but they are supervised by the COC.

Guidance for Examiners

The FRB has developed an experimental form for use on a trial basis by examiners for determining lenders' knowledge of and compliance with Title VIII requirements. In addition, the FRB school for examiners will include in its curriculum, beginning in November, a course in techniques for Title VIII enforcement.

Imposition of Sanctions

The FRB has not developed special procedures for imposing sanctions in cases of violations of Title VIII. The Board believes that in any instance where discrimination is substantiated, appropriate supervisory action could be taken, including use of cease and desist powers.

Requiring Member Institutions to Impose Nondiscrimination Requirements on Builders and Developers

The FRB does not favor legislation authorizing it to require that member banks impose nondiscrimination requirements on builders and developers whom they finance. Such legislation, in the Board's view, would present difficult administrative and enforcement problems.

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FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)*

Questionnaires to Member Institutions

FDIC forwarded the questionnaires to 8,123 member institutions in June 1971. A total of 7,950 responses have been received. Although evaluation is being performed by HUD, FDIC's own preliminary screening has revealed instances of failure to make loans in certain neighborhoods or areas of high minority concentration.

Racial and Ethnic Data on Loan Applications

FDIC continues to doubt the efficacy of requiring its member institutions to collect racial and ethnic data on approved and rejected mortgage applications. It argues that such data will not necessarily reveal discriminatory patterns or practices. FDIC concedes, however: "We recognize that we might be wrong....and are continuing to consider this possibility."

Posting of Nondiscrimination Notices

FDIC does not now require member institutions to post nondiscrimination notices in their lobbies. It continues to explore such a requirement with other Federal regulatory agencies and HUD.

Guidance for Examiners

FDIC considers its present policy of informing examiners of the provisions and requirements of Title VIII to be sufficient training for detection of violations of that law. To date FDIC examiners have not discovered a single violation of Title VIII.

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* The Federal Deposit Insurance Corporation insures deposits of national banks and State member banks of the FRS, as well as State nonmember banks.

Complaints

Since April 1971, FDIC has received one complaint of discrimination in mortgage lending. FDIC is trying to ascertain if the bank in question is subject to its jurisdiction.

Imposition of Sanctions

FDIC has not developed special procedures for imposing sanctions upon member institutions found to be in violation of Title VIII. The Corporation believes it has adequate authority to enforce compliance.

Requiring Member Institutions to Impose Nondiscrimination Requirements on Builders and Developers.

FDIC would support legislation authorizing a requirement that member institutions impose nondiscrimination agreements on builders and developers whom they finance. The Corporation has not reached a conclusion as to whether authority should be vested in the banks' regulatory agencies or in HUD.

Evaluation

Since the Commission's last report, the financial regulatory agencies have received a combined total of just four complaints of discrimination in mortgage lending. Despite the continuing evidence of the ineffectiveness of the complaint process, the agencies generally continue to rely on the number of complaints received as the prime indicator of the extent of racial discrimination in their industry. The Comptroller of the Currency's Office takes the position that the absence of complaints indicates a corresponding absence of racial discrimination in mortgage lending.

Effective inspection requires that lenders retain racial and ethnic data concerning mortgage applicants. Only the Federal Home Loan Bank Board has displayed progress in this area. It has firmly agreed to require member institutions to retain racial and ethnic information and has adopted specific procedures for collecting and analyzing that data.

The only affirmative activity in which all agencies have participated since the Commission's May 1971 report was the sending of questionnaires to each member institution. The response rate has been 90 percent and the responses are presently being processed by HUD. No evaluation has yet been released. Two agencies -- the FRB and the FDIC -- have chosen to perform their own evaluations. Significantly, both have already discovered instances of lenders refusing to make loans in certain areas of minority concentration. The FHLBB has indicated an intent to obtain additional data through its own follow-up questionnaire. It is important that the collection of data not be treated as an accomplishment in itself. The agencies can only be regarded as fulfilling their Title VIII obligations when they use such data to help eliminate discrimination in mortgage lending.

While none of the supervised lending institutions are currently required to post notices of nondiscrimination, all of the agencies have expressed approval of the concept. Only the FHLBB, however, has firmly committed itself to such a requirement and has promised a regulation which will include instructions on such notices. The other agencies continue to study notice requirements while indicating that adoption is likely.

A far more important aspect of an agency's compliance arsenal is the examination process. But its effectiveness depends upon the training of examiners and the seriousness of purpose voiced by the agency. The Comptroller of the Currency presently defends the existing examination process as adequate for the discovery of Title VIII violations. The FRB, while joining the FDIC in placing primary reliance on an improved complaint process, nonetheless seems willing to experiment with certain changes in its examination program. The FHLBB has drafted a revised examiner's manual containing a new section on discrimination and has promised certain changes in its training program. Thus, in the vital area of supervision there are at least some indications of an expanded commitment by three of the agencies. To date, however, that commitment exists largely in the form of plans and promises.

The development of specific procedures for imposing sanctions on member institutions found in violation of Title VIII is an essential step towards an effective enforcement policy. Yet only the FHLBB has done so. The long ignored subject of civil rights violations requires special emphasis and procedures. Reliance on existing sanction mechanisms for other infractions in unlikely to prove effective.

The imposition by lenders of nondiscriminatory requirements upon the builders and developers they finance would afford additional, important leverage to prevent discrimination in marketing housing. Yet, the agencies have strong doubts as to their authority to require lenders to include such provisions in their contracts. Only one agency would favor legislation for that purpose.

Of the four agencies, the FHLBB has, by far, displayed the most affirmative policy. The other three differ in their acceptance of responsibility under Title VIII, with the Comptroller of the Currency showing the least positive attitude of all. The Comptroller refuses even to concede that it has any responsibility under Title VIII for assuring equal opportunity in housing.

EDUCATION

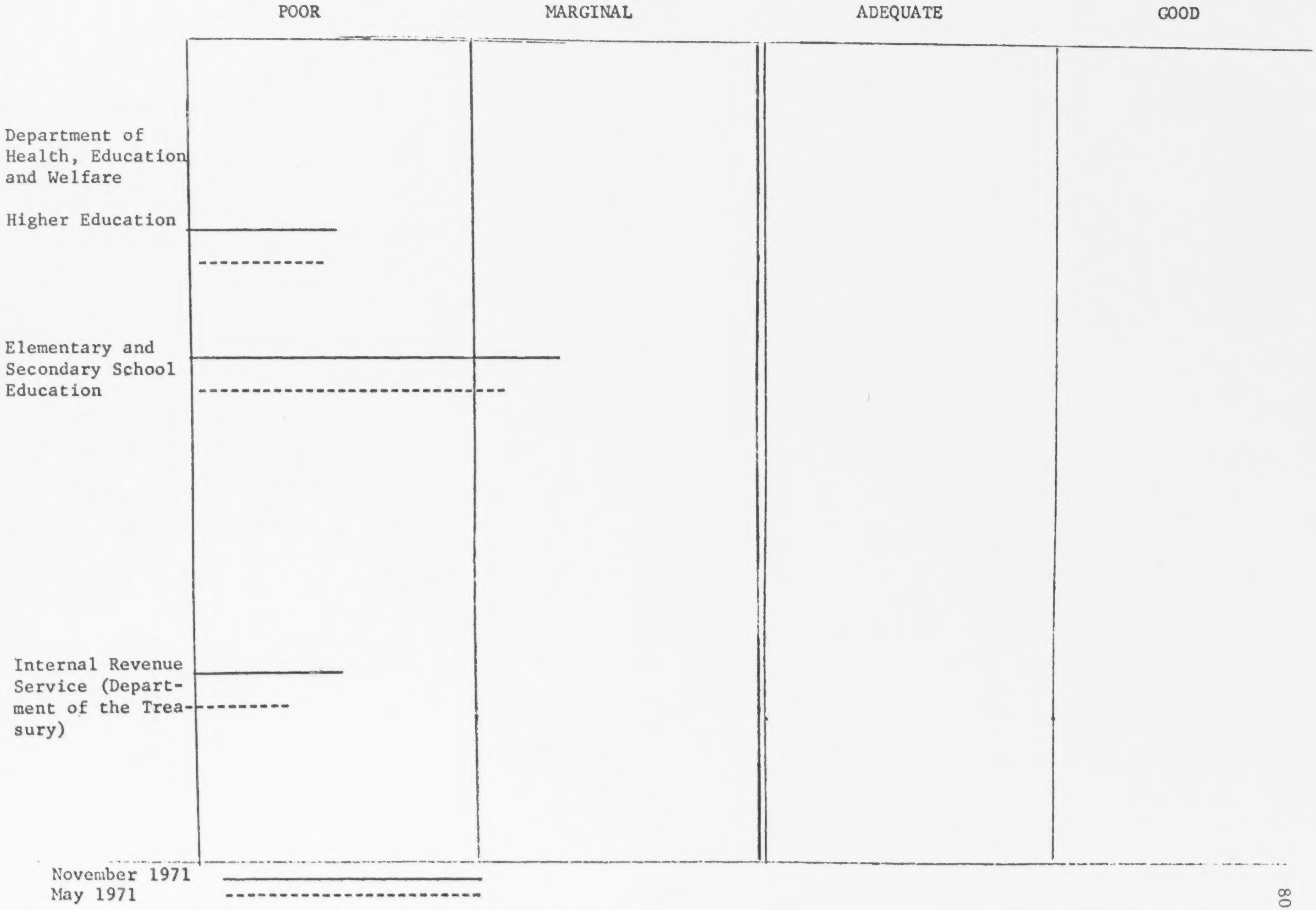
Department of Health, Education and Welfare

- Higher Education
- Elementary and Secondary Education

Internal Revenue Service (Department of the Treasury)

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

EDUCATION



OFFICE FOR CIVIL RIGHTS (OCR)-HIGHER EDUCATION

Department of Health, Education, and Welfare (HEW)

Staffing and Organization in Higher Education

To handle the approximately 2,300 colleges and universities receiving Federal financial assistance, two full-time professionals and one secretary, out of a national office complement of 136 staff members, man the higher education compliance review program. All regional offices except one (Dallas has two full-time professional employees working on higher education) utilize Office for Civil Rights staff interchangeably on higher education and elementary and secondary education compliance. The allocation of time between programs is not "precisely known " however, "substantial time" is devoted to the elementary and secondary program by regional staff.

Responsibility of Higher Education Coordinator

The Higher Education Coordinator has responsibility for developing HEW compliance policies for institutions of higher education under Title VI of the Civil Rights Act of 1964, for formulating the review procedure and overall compliance review program of the Office for Civil Rights in connection with colleges and universities receiving Federal financial assistance, for monitoring the higher education compliance review program conducted in the regional offices, for reviewing reports of all higher education institutions visited by regional staff, for evaluating the progress of the higher education compliance programs, and for revising policies from time to time.

Related duties which were previously performed by the Higher Education Coordinator include cooperation with the Director, OCR; the Director of Program Planning; and the Chief of the Education Branch, Operations Division under Title VI of the Civil Rights Act of 1964. The Coordinator also reviewed all complaints of discrimination against institutions of higher learning and concurred in selection of particular colleges and universities for compliance reviews based on complaints. He also develops an affirmative action program to encourage disadvantaged youths to enter and matriculate at institutions of higher education.

Presently, however, the higher education compliance program has been largely decentralized. Concurrence on recommendations being made on State college and university compliance is still required from Washington, but responsibility for the other activities enumerated above now rests with regional directors of OCR.

Some effort is made by the Higher Education Coordinator to affect programs at the Washington level in selected bureaus of the Department and the Office of Education where the programs provide financial benefits to institutions of higher learning.

Compliance Procedures

The Office for Civil Rights and its predecessor organization have worked in the area of higher education from the inception of the Title VI operation, but the higher education compliance program is considered by HEW to have become operational in the Fall of 1967. Two major complementary elements of the compliance program are:

a) collection of data from institutions of higher education, and

b) conduct of on-site compliance reviews of colleges and universities and related followup activities.

Data Collection

Data collection is an integral component of the compliance program in higher education. The Compliance Report of Institutions of Higher Education, sent to public and private institutions, requests information concerning the number of students enrolled, the number of students receiving athletic scholarships, the number of students receiving financial assistance, the amount of financial assistance given to students, and the number of students residing in college-owned or college-supported housing. A racial and ethnic breakdown for those items is also requested. The college or university is also asked whether recruitment programs, admission standards, college-owned or supported housing, off-campus housing, university administered student financial aid, employment and job placement services, extra-curricular activities, and off campus student training assignments are administered in a nondiscriminatory manner. The survey is conducted every two years and responses by institutions provide the basis for on-site compliance reviews, particularly when minority attendance at the institutions is low.

On-Site Compliance Reviews

On-site compliance reviews are conducted at institutions reporting low minority enrollment on the compliance report survey to determine whether benefits and services are accorded in a nondiscriminatory manner at the institution.

During the on-site review, the president of the university (or another senior official), other institution representatives, and community and student leaders are interviewed. Compliance reviews focus on nondiscrimination policies of the institution, student admission policies, counselling and tutoring, student teaching, student activities, student housing, and the like. The reviews are conducted at both private and public colleges.

During Fiscal Year 1969, OCR conducted 212 higher education compliance reviews, 77 of which were conducted at private institutions. In Fiscal Year 1970, the number of reviews increased to 258, of which 87 were private institution reviews. But, in Fiscal Year 1971, there was a decline in the number of compliance reviews conducted to 138, of which 58 were at private institutions. Thus far in Fiscal Year 1972, only 27 reviews have been undertaken, four of which were at State colleges.

Activity Following On-Site Review

Following a compliance review, a report is developed for OCR's internal use. That report also forms the foundation for recommendations to be made in writing to the institution reviewed in connection with its compliance status. One recommendation following an on-site review might be that the equal educational opportunities policy of the institution be effectively communicated and made explicit for students, faculty, administration, the community, and prospective students (via school catalogue, application forms, memoranda to the entire school community from the president). Another possible recommendation might be a request for action to preclude barriers to minority group participation in college-supported sororities and fraternities and other social organizations.

Normally, the institution is expected to respond in writing within 60 days indicating what steps it plans to take to change policies in areas where discrimination exists. Changes which the institution agrees to make are to be monitored by an additional on-site review by the regional OCR staff.

Although OCR indicates that a follow-up review is conducted 12 to 18 months following written indications by institutions of changes to be made in their programs, only about a third of the institutions have been revisited to monitor the effectiveness of or the implementation of the planned changes by the institutions. Nevertheless, indication by letter that changes are planned has resulted in declarations by OCR that the institutions have a satisfactory compliance status.

Compliance and State Systems of Higher Education

Compliance activities include negotiations involving States which traditionally have operated segregated systems of higher education. West Virginia and Missouri have integrated the institutions which were established for blacks. Segregated systems of higher education remain in seventeen States.*

Ten of these systems have been reviewed by OCR, but continue to maintain segregated institutions. The racial identifiability of the institutions remains virtually unchanged. On-site compliance reviews were conducted in ten State college systems in late 1968 or early 1969. Yet, as of November 1, 1971, five (Louisiana, Mississippi, North Carolina, Oklahoma, and Florida) have not submitted outline plans for ending State-operated dual systems of higher education. Two States (Virginia and Georgia) have submitted outline plans dated April 10, 1970 and May 15, 1970, respectively, but OCR has not yet commented on, accepted, or rejected these outline plans. In two other States (Arkansas and Pennsylvania) final plans were submitted on October 31, 1969 and November 26, 1969, respectively. Once again OCR has not commented on, accepted, or rejected the final plan. Only one State, Maryland, has received comments from OCR regarding the final plan it submitted.

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* Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, and Virginia.

Despite the fact that compliance efforts were initiated through on-site reviews in 1968 or 1969, OCR indicates that "negotiations are continuing" in Louisiana and Mississippi; that Arkansas, Pennsylvania, Virginia, and Georgia are "under review;" that Maryland's "revision of its final plan is being awaited;" and that OCR "awaits outlines of plans from North Carolina and Florida." In Oklahoma, the request for a desegregation plan is dated February 16, 1970. Yet, under OCR procedures, an outline desegregation plan is due 120 days after it is requested and a final plan is due 90 days after OCR has commented on the outline. Nevertheless, almost three years later no single acceptable plan from these systems has been negotiated or received.

In connection with States which have operated segregated systems of higher education, OCR takes the position that cooperative actions among the institutions which comprise the system are required to eliminate the vestiges of segregation.* OCR has stated that because "attending college is not compulsory and individuals are free to apply to any public or private institution in any part of the country, the precise effect of any plan to disestablish a dual State college system cannot be known prior to its implementation." Since steps such as curriculum consolidation have been recommended over a period of several years, a determination of whether a State college system is in compliance rests on "whether steps are being taken which have a high probability of eliminating the dual system." OCR also indicates that "eventually, of course, results must be achieved and demonstrated." OCR, however, has "not adopted a criterion to determine whether a dual system has been eliminated, through such a technique as racial balance, but there must be substantial desegregation of student bodies and faculties throughout the system." OCR concludes that the precise meaning of "substantial desegregation" will depend upon the circumstances in each State.

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* The approach which OCR recommends is that there be elimination of duplicative curricula among black and white State colleges located near one another and the establishment of areas of academic specialization at the colleges. Other areas in which cooperation could be fruitful are sharing of resources such as physical plant and equipment, scheduling **intercollegiate** athletic contests across racial lines, and merger of support services such as procurement.

Yet OCR has failed to take enforcement action against existing segregated State college systems,* and it also has neglected to take enforcement action against State college systems which have begun to establish additional branches of State institutions continuing racially dual patterns.**

Evaluation

The tools and procedures utilized by higher education staff are effective and comprehensive. The substantive issues covered in compliance reviews cannot be faulted. The higher education program has developed a viable mechanism for determining operative facts necessary for reaching a determination regarding an institution's compliance status. As well, OCR has an enforcement mechanism at its disposal. Our conclusion, however, is that HEW has largely neglected its responsibility for enforcement of Title VI in higher education.

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* A suit filed against HEW, Adams v. Richardson, alleges that HEW is violating the Civil Rights Act of 1964 and the Fifth and 14th amendments of the U.S. Constitution by not cutting off Federal funds to colleges and universities that continue to discriminate on the basis of race.

** E.g., Houston, Texas--Texas Southern University (3,568 blacks, 28 whites) University of Houston (363 Blacks, 12,253 whites); Savannah, Georgia--Savannah State College (2,184 Blacks, 10 whites) and Armstrong State College (37 blacks, 1,236 whites); Greensboro, N.C.--North Carolina A & T State University (3,338 Blacks, 14 whites) and the University of North Carolina at Greensboro (146 Blacks, 4,473 whites); Nashville, Tennessee--Tennessee State University (3,774 Blacks, 11 whites) and the University of Tennessee-Nashville (32 Blacks, 433 whites).

Although OCR has conducted reviews in private institutions and recommended changes in those schools, OCR's failure, for the most part, to monitor closely these institutions following compliance reviews the question as to whether the institutions actually have implemented plans developed to meet Title VI violations.

It can be said that racially segregated institutions for blacks and whites remain within State administered systems of higher education not only in the ten States reviewed in 1968 and 1969, but also in Delaware, Kentucky, Alabama, Tennessee, and Texas. These State systems have not been reviewed although they, too, maintain duality.

The conclusion is inescapable that negotiations between OCR and States operating systems of higher education have been unsuccessful. After the elapse of several years, further negotiations with State officials unaccompanied by enforcement activity indefinitely postpone redress of violations of constitutional rights.

OCR is aware that the ten public systems, as well as other State maintained segregated systems, do not meet the requirements of Title VI and represent violations of constitutional rights under the 14th amendment. Nevertheless, the enforcement mechanism has not been used. In addition, OCR is aware of private institutions in violation of Title VI. Again, administrative enforcement proceedings have not been initiated.

Failure to adopt measurable criteria to determine whether a dual system has been eliminated also represents another major weakness of the program. To say only that "substantial desegregation of student bodies and faculties" is required throughout a system and thereafter to indicate that the precise meaning of "substantial desegregation" will depend upon the circumstances in each State, limits the program intolerably.

OFFICE FOR CIVIL RIGHTS (OCR)--ELEMENTARY AND SECONDARY EDUCATION

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW)

Staffing and Organization

The Washington OCR has a staff of 41 devoted exclusively to elementary and secondary education. The bulk of the education staff--well over 100--is assigned to regional offices. The OCR operation currently is decentralized, with significant responsibility vested in Regional Directors for Civil Rights in HEW's various regional offices. Reporting to the Regional Director is an Education Branch Chief, who supervises Title VI compliance officers. These compliance officers, in conjunction with the Education Branch Chief, engage in a variety of activities, including the conduct of on-site reviews of elementary and secondary school districts, negotiating with school districts for voluntary desegregation plans, and assisting school districts generally in achieving compliance with the requirements of Title VI.*

The points of contact with Washington include the Washington Education Branch Chief, the Director of the Office for Civil Rights, and officials responsible for compliance in particular States. Generally field work is done by staff in regional offices, though central office staff may join some review teams or may themselves conduct reviews. The file of a district considered to be out of compliance by the Regional Office is forwarded to Washington for review in OCR. Thereafter, it is submitted to HEW's Office of General Counsel for enforcement action.

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* This structure is duplicated in all regional offices except Kansas City which has only two persons staffing the office.

Compliance Mechanisms

Of all the agencies having responsibilities under Title VI, HEW has developed the most comprehensive and sophisticated compliance mechanisms. This is particularly true regarding its activities in the area of elementary and secondary school desegregation. OCR collects comprehensive racial and ethnic data and maintains an effective system for utilizing these data for compliance purposes. Further, HEW has established mechanisms for systematic on-site compliance reviews of school districts for purposes of monitoring compliance with the requirements of Title VI. In addition, over the years, HEW has built up a sizable staff which is experienced and capable of carrying out these compliance activities effectively.

Thus from the standpoint of compliance structure and mechanism, there is little question that HEW is ahead of all other Title VI agencies. In recent years, however, the Department has not made the fullest possible use of the compliance mechanisms available to it for purposes of eliminating school segregation.

Compliance Categories Maintained for School Districts

The Office for Civil Rights maintains four distinct categories for purposes of monitoring compliance with Title VI.

1. School districts which have desegregated pursuant to court orders. OCR accepts as full compliance a final court order coupled with a district's assurance of compliance with the order.
2. Districts which have submitted voluntary plans of desegregation to HEW. Voluntary plan districts are those in the process of desegregation under a plan usually developed in cooperation with HEW.

During the desegregation process, the district files a "441B Assurance" stating that it is taking appropriate steps to eliminate all remnants of segregation in its schools.

3. Districts which have assured HEW that they are presently in compliance. Such districts submit a "441 Assurance" and its acceptance by HEW assures that the district will no longer be stringently monitored by HEW.

4. Districts which are engaged in litigation, whether through action by the Department of Justice or by private parties. These districts are also not subject to extensive compliance activity by HEW.

There is one important caveat of which one should be aware when these various categories are discussed. Recent court decisions* have imposed more stringent desegregation requirements on school districts than were previously imposed. Under earlier case law and HEW policies, school districts were considered "desegregated" even though certain elements of the dual system of education continued. Thus, court orders, voluntary desegregation plans, and assurances of compliance, that had been accepted prior to recent court decisions now are often out-of-date and require less of the districts than present standards call for.**

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[*] E.g., Alexander v. Holmes, Swann v. Charlotte-Mecklenburg.

[**] E.g., All-black or all-minority schools and limited faculty desegregation, which now must be justified, previously were accepted.

Role of OCR in Voluntary Plan Districts (441-B)

The principal responsibility of OCR education personnel is to attempt to secure voluntary compliance with Title VI. During the 1968-69 school year, a major effort was made by OCR to secure final desegregation plans for all school districts by the Fall of 1969. Exceptions were made in cases where school construction problems in the district would delay compliance until the Fall of 1970 and where a majority-black district existed.*

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* Majority black districts were considered to have unusually difficult problems. The plans developed in these two school years did not perclude majority-black or even all-black schools in majority-white districts from being a part of an acceptable plan. Effort was made to assure that busing of children would be minimized. Rather than transport students, therefore, majority-black and all-black schools were often acceptable. However, there was considerable effort to pair schools which were nearly contiguous, though resegregation might be readily predictable.

Most school districts submitted plans acceptable to HEW in a timely fashion. A few did not. Of those that did submit plans, some reneged on implementing them. In a few cases, OCR instituted administrative enforcement proceedings under Title VI. In most cases, however, OCR compliance action was limited to negotiation or referral to the Department of Justice for possible litigation.

Swann v. Charlotte-Mecklenburg Board of Education

In April 1971, the U.S. Supreme Court, in Swann v. Charlotte-Mecklenburg, concluded that in school systems with a history of segregation there is a presumption against schools substantially disproportionate in their racial composition and that school districts with such schools "have the burden of showing that such school assignments are genuinely nondiscriminatory," (emphasis added). Thus, under the Court's ruling, the burden is placed on the school district to show that school assignments do not result from present or past discriminatory practices.

Following Swann, the OCR compiled a computer print-out* for all

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* Careful review of the print-out reveals a defective design, for it will not show any school districts which have never had at least one school which is 50 percent black or minority. Hence, information on districts having schools substantially disproportionate in racial composition to the overall school district population would not be revealed. Swann specifically refers to a presumption against schools that are substantially disproportionate in their racial composition.

Southern and Border State school districts having one or more schools composed disproportionately of one race. The Office for Civil Rights then eliminated from consideration under the print-out any districts in litigation as well as any under court order.

Although the Swann decision makes clear that the burden is upon the school district to show that schools all of one race or disproportionately of one race are not unconstitutionally discriminatory, OCR has relieved most of the districts of this burden. It reduced the number of districts which, according to the print-out, should have been required to justify the existence of majority-black or all-black schools, from more than 300 to only 91 school systems. OCR based its determination of which schools to eliminate from the Swann presumption on the analysis of data within its files and its judgment as to various problems facing these school districts.*

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* Utilizing a case by case approach during the 1971 summer months, the Office for Civil Rights determined whether schools in the districts had always been black schools and, if not, why they had become black. The Office then spent considerable time making a determination of whether racial identifiability could be eliminated under Swann, whether the geographical location of schools was such that they could not be paired, whether the school involved was a sound facility, and whether capacity and transportation problems existed to such an extent that no remedy was available to the school district. Further, where the pupil composition was not clearly racially identifiable, or only marginally so, the Office determined what additional considerations should bear on a decision about the school as a part of a racially dual system. Some 441 districts, about which insufficient information existed, were visited during the summer prior to the sending of Swann letters.

In effect, OCR assumed the burden for more than 200 school districts.

HEW informed each of the 91 school districts of possible violation of the Swann decision. Only 82 of the 91 districts, however, were actually asked to modify their desegregation plans.

Of the 82 districts, 45 have submitted plans and 35 of these have been accepted. As of October 22, 1971, 37 districts had not developed plans. According to OCR, 30 of the districts that submitted acceptable plans have no all-black, no all-minority, no all-white schools, and no schools substantially disproportionate in racial composition to the overall school district population. The other five districts whose plan were accepted by OCR maintain schools substantially disproportionate in racial composition. Despite the requirements of Swann, OCR accepted these plans as representing compliance.

Although OCR has had lengthy dealings with most of the 82 districts identified as potentially in violation of Swann, many of them still had not achieved acceptable compliance status by the opening of school in September 1971. Immediate administrative enforcement action, however, was not taken in most cases. During the entire calendar year of 1971, there were only nine deferrals of funds and only two orders for fund termination.*

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* In one case the school district submitted an acceptable desegregation plan prior to termination. In the other, a final court order was filed. In neither case were funds actually terminated. In 1969, by contrast, there were 92 deferrals and 11 fund terminations.

Role of OCR with Districts "In Litigation"

The "in litigation" category has been recently established by the Office for Civil Rights. Although a school district is deemed in compliance with Title VI only when it is in compliance with a final court order, in reality HEW undertakes almost no compliance activity once a case is in any stage of litigation. Further, OCR fails to investigate and monitor the actual compliance of school districts with final court orders.*

Role of OCR in Districts filing "441 Assurances"

Districts which have filed acceptable "441 Assurances"--even those that filed them long ago--have not generally been scrutinized by OCR staff to determine the applicability of the Swann decision to their compliance status. Few of these districts have been required to submit new plans conforming to the Swann criteria. A cursory appraisal of such districts, however, reveals a number of systems which appear to be in violation of the Swann decision.

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* This has been true except where courts have specifically directed OCR to monitor a district or where investigations have been conducted to determine whether districts are eligible for Emergency School Assistance Program Funds.

Role of OCR in Northern School Desegregation

Since enactment of Title VI, OCR has conducted reviews in a total of 17 Northern and Western States. During the period April 1968 to March 1971, only 65 reviews were conducted in these States, compared with approximately 2,000 conducted in the South. Of this limited number of districts reviewed, the vast majority remain in the status of "review in progress," i.e., no determination of compliance status has been made. Although there have been a small number of negotiated agreements under which some northern districts have achieved an acceptable compliance posture, administrative enforcement rarely has been set in motion. In the entire history of the HEW Title VI enforcement program for northern school districts, there have been only two districts found in noncompliance, but termination has occurred in neither.*

The Role of OCR in Preventing Demotion, Dismissal, and Displacement of Minority Educators

On January 14, 1971, a memorandum entitled Nondiscrimination in Elementary and Secondary School Staffing Practices was sent by the Director of the Office for Civil Rights to chief State school officers and school superintendents. The memorandum provides that it will be HEW's policy to make further inquiry into questions of racial compositions of staff where there have been significant changes in the racial or ethnic composition of teaching and administrative staff and where limited desegregation of staff exists despite availability of staff. The memorandum provides that information about hiring, promotion, demotion, dismissal, and other treatment of staff will be analyzed and, where necessary, additional investigation will be conducted to determine whether discrimination has been practiced. The memorandum provides for development of corrective action plans to overcome the effects of discriminatory practices. No mention, however, is made of the sanctions available through administrative enforcement.

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* There have been only two administrative hearings. In those, the Hearing Examiner ruled that the districts were in noncompliance. The rulings were sustained by the Reviewing Authority. One district has been settled and the other is awaiting termination.

On September 16, 1971, OCR issued a memorandum revealing that the total number of teachers had increased by more than 100,000 since 1968. For white teachers the rate of increase was 6.9 percent, but the rate for black teachers was only 3.3 percent. OCR attributed the disparity to a decrease in the number of black teachers in the South. In fact, there was a relative decline in the number of black teachers in the South of 8.5 percent.* OCR was silent, however, on whether the decrease in the number of black teachers was caused by systematic discrimination and the resulting loss of job opportunities. Despite these figures, OCR has cited only three Southern school districts for noncompliance on the basis of faculty discrimination.

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* There has been a loss of 948 black teachers since 1968 in North Carolina, a loss of 533 in Alabama, 469 in Mississippi, 419 in Louisiana, 300 in Arkansas, 282 in Georgia, 193 in South Carolina, 177 in Virginia, and the loss of 40 in Tennessee. There has been a gain of 282 teachers in Texas and 850 in Florida. There has been a loss of 2,229 black teachers since 1968 in the eleven Southern States which represents a relative decline of 8.5 percent when compared to the increase of white faculty.

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Discrimination on the Basis of National Origin

In May 1970, OCR issued a memorandum regarding discrimination on the basis of national origin. The memorandum described four major areas of concern relating to Title VI compliance:

1. School districts must take affirmative steps to rectify a language deficiency whenever it excludes national origin minority group children from effective participation in its education program;
2. School districts must not assign pupils to emotionally or mentally retarded classes on the basis of deficient English language skills;
3. Ability grouping or tracking must be designed to increase language skills; and
4. School districts are responsible for notifying the parents of national origin minority group children regarding school activities.

The Office for Civil Rights also has identified educational programs that can be offered to school districts seeking to comply with the provisions of the memorandum. In addition, OCR has established an Intra-Departmental Advisory Committee responsible for supervising the rendering of technical assistance to school districts attempting to comply with the provisions of the memorandum. OCR has also established an on-going relationship with a group of approximately 40 outstanding Mexican American, Puerto Rican, and American Indian educators, psychologists, and community and civil rights leaders.

Twenty districts with Spanish speaking children are being reviewed and 14 other districts have been notified of compliance problems under the memorandum and Title VI. Four of 14 districts notified of compliance problems have been referred to Washington for administrative action. No district, however, has thus far been cited for noncompliance because of discrimination on the basis of national origin.

Evaluation

Compared to other Federal departments and agencies with Title VI responsibilities, HEW has developed the most comprehensive and sophisticated mechanisms for assuring compliance with that law. This is particularly true regarding its Title VI efforts to eliminate elementary and secondary school segregation. Measured by staff adequacy, organization, and compliance techniques, HEW clearly leads the rest of the government in its Title VI effort.

The policies under which OCR has carried out its school desegregation responsibilities in recent years have had the effect of diminishing the effectiveness of the compliance mechanisms available to it. For example,despite OCR's resolve to secure desegregation plans for most school districts by the Fall of 1969, it failed to take vigorous compliance action regarding school districts that did not submit such plans or which reneged on implementing them after having submitted plans.

Further, despite the decision of the U. S. Supreme Court in Swann v. Charlotte-Mecklenburg, establishing a presumption against schools substantially disproportionate in their racial composition and placing on them the burden of showing that school assignments are genuinely nondiscriminatory, OCR has relieved a large number of such school districts of this burden and applied it to less than 100 school systems.

In addition, HEW does not, in fact, enforce Title VI with regard to most school districts which are involved in any stage of court proceedings. Nor does HEW monitor actual compliance with final court orders. Thus HEW allows Federal funds to continue to flow to districts which may not be in compliance.

OCR activities in the area of Northern school desegregation never have been substantial. Few compliance reviews have been conducted in Northern states and procedures for administrative enforcement rarely have been set in motion.

In sum, the performance of HEW in carrying out its school desegregation responsibilities has not matched the strength of the compliance mechanisms available to it. There has been an overall decline in the standards by which OCR determines Title VI compliance and a growing reluctance to make full use of the compliance mechanisms it has developed. Of principal importance is HEW's reluctance to utilize the sanction of fund termination, which was a principal factor contributing to the success of its past school desegregation effort.

INTERNAL REVENUE SERVICE (IRS)

DEPARTMENT OF THE TREASURY

Nondiscrimination Requirement

As public schools in the South were being desegregated in the late 1960s many white parents withdrew their children from the public schools system and placed them in all-white, segregated private schools, a number of which had commenced operation just as public school integration was becoming a fact of life in the local community. Most of these schools received a tax exemption from IRS as charitable institutions, and donations to the schools were tax deductible. Many groups, including this Commission, criticized IRS for its action in granting tax benefits to racially segregated private schools.

In July of 1970, the Service reversed its position and announced that segregated private schools no longer qualified for tax exempt status or as charitable deductions. Finally, in June 1971 a U. S. District Court handed down a decision holding that the Interval Revenue Code does not permit tax exempt status or the deduction of charitable contributions to racially discriminatory private schools. (See Green v. Connally, Civil Action No. 1355-69, D.D.C., June 30, 1971.)

Coverage of the Nondiscrimination Requirement

According to an IRS Revenue Ruling, a racially nondiscriminatory policy as to students means that:

> "...the school admits students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs."

The IRS definition of the racially nondiscriminatory policy as to students does not encompass the matter of teacher employment. Although the Green **decree** required the private academies in Mississippi to supply a racial breakdown of faculty and administrative staff, the IRS notes that the decision does not require nondiscrimination of faculty and administrative staff. It only requires information on such staff because minority representation on the faculty or administrative staff is relevant to the question of whether the school has a discriminatory policy as to students. The Service further states that the requirement of a nondiscriminatory policy as to students is grounded in Federal public policy. IRS cites the fact that Title VII of the Civil Rights Act of 1964 does not apply to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of the institution.

IRS does not indicate an awareness that the Department of Health, Education, and Welfare (HEW), on the basis of Title VI of the Civil Rights Act of 1964, has prohibited faculty discrimination in public elementary and secondary schools on the ground that faculty discrimination results in discrimination against students in that it affects equality of treatment afforded them and that HEW's position has been judicially upheld.*

Results of the Green Decision

The court permanently enjoined the IRS from continuing in effect beyond 90 days from the date of the order any ruling recognizing the tax exempt status of a private school in Mississippi unless the school had racially nondiscriminatory policy as to students. The decision thus supported the position enunciated by IRS almost a year earlier.

The court, however, went further. It required the collection of certain information, and only as a result of an IRS affidavit which assured the court that it would undertake a compliance program did the court refrain from ordering IRS to undertake specific enforcement activities. IRS sent a letter to each private school in Mississippi having an individual tax-exempt ruling at the time of the Green order (and to each parent organization with a group ruling that includes Mississippi schools), noting that the court order requires each private Mississippi school seeking recognition of tax exemption to submit certain material for the Service to consider in determining whether the school has actually established a policy of nondiscrimination.

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* While this prohibition stems from the authority of Title VI of the 1964 Civil Rights Act and while the question of the applicability of Title VI to tax benefits and deductions provided private academies was not decided in the Green case, the Commission feels that the prohibition employed by HEW can be validly applied to private schools by the IRS.

The information required includes a racial breakdown of students attending and applying, the disposition of available scholarship and loan funds, and a racial breakdown of faculty and administrative staff. It also includes a listing of incorporators, founders, and board members; a listing of donors of land or buildings, whether individual or corporate; and a statement as to whether any of the foregoing have an announced identification as officers or active members of an organization having as a primary objective the maintenance of segregated school education. In addition, the order required that each school publicize its racially nondiscriminatory policy as to students. This information was to be furnished in a "Statement in Support of Exemption" by each school seeking such an exemption. Although the Green order stated that it did "not exhaust the enforcement function of the Service," IRS has imposed no other informational requirements on Mississippi schools.

The court did not establish any substantive criteria for evaluating the responses elicited. The letter sent by IRS (to the private schools and parent organizations) delineated some criteria which establish what constitutes minimum compliance with the requirement for publication of the school's nondiscriminatory policy. But the letter did not set forth criteria which could be used to ascertain what constitutes a nondiscriminatory policy. The IRS has stated that it does not see the necessity for developing written criteria "since all responses are forwarded to the National Office of the /IRS/ and reviewed by representatives of the

Commissioner. . . as well as a representative of his Chief Counsel."*

Application of the Green Decision Outside of Mississippi

Although the court's order in Green was limited to private academies in Mississippi, the court clearly enunciated the applicability of the principles of its decree to private schools throughout the Nation. The IRS, however, will not require that schools outside Mississippi submit the information the court ordered be obtained from Mississippi schools, "unless there is a reason to doubt the good faith of a school's declaration of a nondiscriminatory policy and an examination is conducted."

The IRS has required each school outside Mississippi to submit a statement indicating whether the school's admission policies and practices are nondiscriminatory (and, if so, to indicate how this has been publicized), but these statements are not accompanied by specific statistical data. In any event, to date, these statements have not been completely analyzed.

The IRS previously indicated that on-site field examinations would be performed, where necessary, prior to affirmation of the granting of tax exempt status. The Service's most recent correspondence indicates that these examinations will be conducted when its personnel "have reason to doubt" the assertion of a nondiscriminatory policy. There are as yet, however, no guidelines for conducting these reviews.

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* The fact that the responses will be reviewed at the highest level does not obviate the need for some general criteria to assure uniformity of treatment.

The implication is that the field examination system will be operated on a complaint-oriented basis. To date about 170 complaints of racial discrimination have been received by IRS. In approximately 140 of these cases, a determination has been made that the schools were not individually recognized as exempt, although the IRS conceded that the school may be included in a group ruling. In seven cases, a field examination has been conducted but no determination has been made, while in the remaining 19 cases information has been forwarded to the appropriate District Director for his consideration.

Compliance Status of Private Schools

In April 1971 IRS noted that recognition of the tax-exempt status of twenty-three schools had been revoked because they had failed to provide assurances that they would not practice racial discrimination.

In fact, 29 schools had failed to provide such assurances, but at that time six were simply advised that the Service proposed revocation and were provided an opportunity to appeal. An additional 56 schools that had applied for recognition of tax exemption failed to respond to a request for a nondiscrimination assurance, and the IRS terminated consideration of their applications. Two schools also withdrew their applications when apprised of the Service's regulation. Recently, nine additional schools (including the six alluded to above) have not complied with the request for an assurance and have lost recognition. Decisions are currently pending regarding 79 schools.

IRS furnished this Commission with copies of responses prepared by five schools, which it found conformed to the requirements imposed by the Green order. Three of the five schools had no Blacks in their student bodies (nor, for that matter, had any Blacks applied for admission). Only one of the three schools anticipated that Blacks would enroll for the next academic year. Another of the schools had an all-Black student body (two whites had been admitted but later dropped out). Only one of the five schools had an integrated student body (i.e., 9 Blacks out of a total of 625). Four of the five schools had an all-white faculty and administrative staff (and only one anticipated hiring Negro faculty or administrative staff members), while the all-Black school had an all-Black staff.

Parochial Schools

Parochial schools are treated similarly to other private academies with the same distinction made between schools in and outside of Mississippi.

Evaluation

IRS has not undertaken an affirmative enforcement program of its own ruling, now judically sanctioned, that segregated private schools are not entitled to tax benefits. The Service's enforcement effort is generally limited to accepting on faith that a school does not discriminate, even if it is a racially segregated school.

The decision in the Green case forced IRS to collect a significant amount of data about the private schools in Mississippi. It has not, however, developed any written criteria for determining compliance status on the basis of the information. Even more significant is the IRS decision not to apply the Green decision nationwide, but merely to restrict application of the dictates of the court to Mississippi. A further manifestation of IRS's negative attitude in this area is its narrow construction of what constitutes a discriminatory school--IRS has determined that it may grant exemptions and deductions to schools which practice overt discrimination against Black teachers, although HEW, the Department of Justice, and the courts have found to the contrary with regard to public schools.

FEDERALLY ASSISTED PROGRAMS - TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Department of Justice - Coordination

Department of Agriculture

Department of Commerce

Department of Health, Education, and Welfare - Health and Social Services

Department of the Interior

Department of Justice - Law Enforcement Assistance Administration

Department of Labor

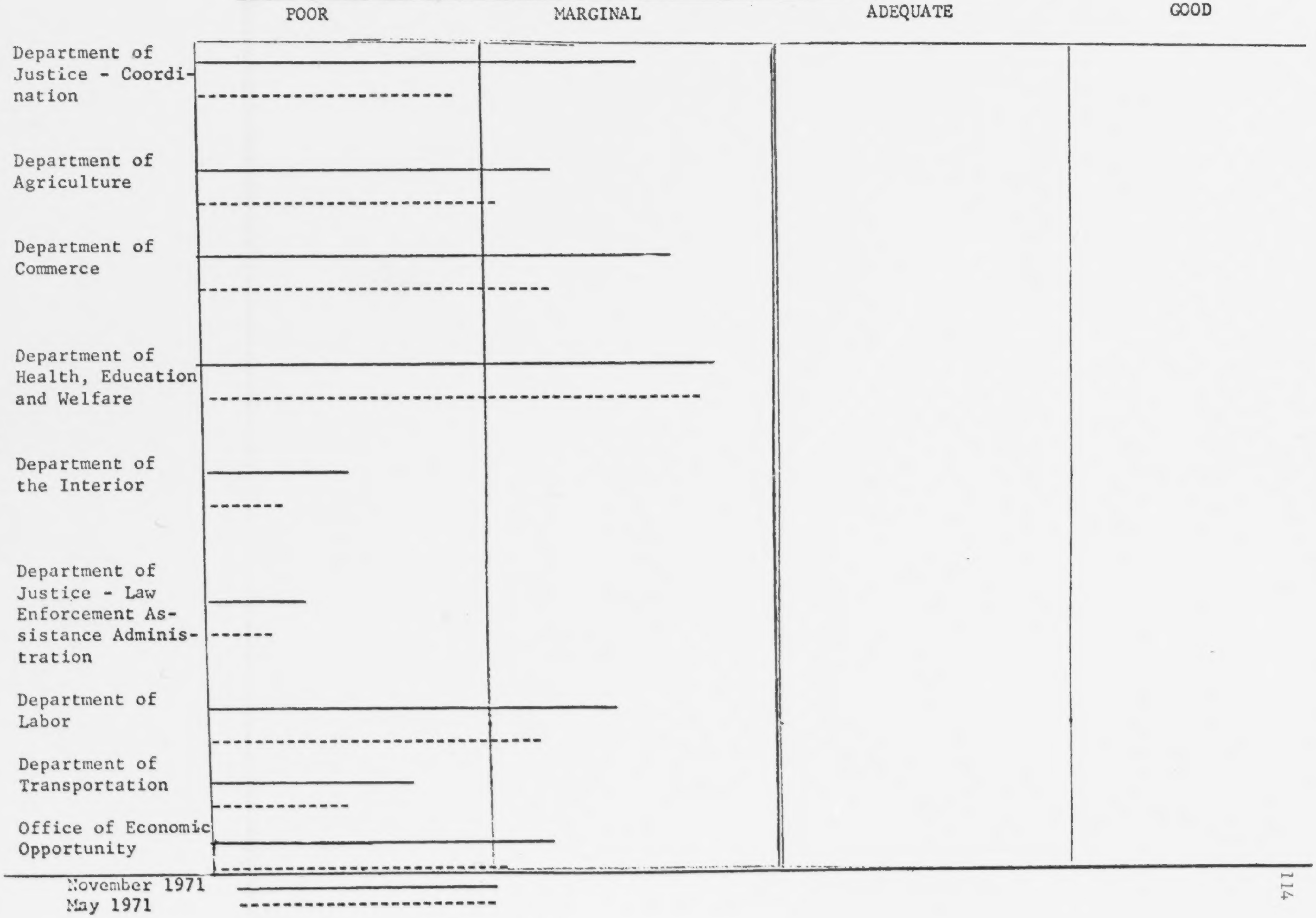
Department of Transportation

Office of Economic Opportunity

Agencies With Responsibility for Programs with Other Than Major Title VI Impact

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

FEDERALLY ASSISTED PROGRAMS - TITLE VI OF THE CIVIL RIGHTS ACT OF 1964



DEPARTMENT OF JUSTICE (DOJ) TITLE VI

Staffing and Organization

This Commission's October 1970 report noted that "Justice Department's effort to fulfill the mandate of Executive Order 11247 regarding coordination of Title VI matters within the Federal Government has suffered from inadequate staffing and a progressive lowering in priority."*

On September 9, 1971, the Title VI Office of the Civil Rights Division was upgraded to the status of a Section within the Division, equivalent to the Housing and Employment litigation Sections. The Director of the new Title VI Section, however, remains a GS-15 and continues to report to a Deputy Assistant Attorney General.**

The staffing level of the Title VI Section has not significantly increased since May of 1971, when six attorneys were added to the then staff complement of six lawyers (including the Director), two research analysts (one of whom was part-time), and two secretaries.

The Justice Department anticipates that the staff of the Title VI Section will be further expanded. Plans provided for eight additional

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* Executive Order 11247 (1965) assigned to the Department of Justice the responsibility of assisting agencies to coordinate their programs and activities and to adopt consistent and uniform policies, practices, and procedures with respect to enforcement of Title VI.

** When the Title VI unit first was established, the Director was a GS-17 and reported directly to the Attorney General.

Title VI positions (six attorneys and two clerical employees) to be added this fiscal year, but the Government-wide reduction of staff has cast a doubt on the size of the increase.

Seven attorneys in the Title VI Section have been assigned, on an essentially full-time basis, to monitoring the Title VI activities of five agencies.* Their principal task has been to familiarize themselves with the agencies' Title VI mechanisms through extensive surveys and participation in some aspects of the agencies' compliance programs. The remaining three attorneys (excluding the Director and his Deputy) deal largely, although not exclusively, with Department of Agriculture programs. The same three attorneys also relate to the Small Business Administration, the Economic Development Administration of the Department of Commerce, and to interagency matters such as racial data collection systems.

While this approach will tend to foster an agency expertise among the attorneys, it necessarily means that other agencies with significant Title VI responsibilities (e.g., Department of Interior, Office of Economic Opportunity, and Veterans Administration) are only dealt with on an ad hoc basis. This situation may be remedied, however, if and when the staff complement is increased.

Coordinating Activities

While the agency surveys, alluded to above, have varied in scope and focus, most have involved meetings with civil rights and program personnel of the agency, analysis of pertinent statutes and regulations, and discussions with private organizations. In addition to enabling attorneys to familiarize themselves with the agency programs, the aim of these surveys is to enable the Justice Department attorneys to identify areas of Title VI enforcement which may need improvement.

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* Two attorneys deal with the health and welfare programs of HEW; two with HUD; one with Labor; one with the Law Enforcement Assistance Administration (LEAA) of DOJ; and one with Department of Transportation (mainly the Federal Highway Administration).

In fact, attorneys in the Title VI Section have done much to acquaint themselves with agency programs and identify problem areas. But the Department has not yet formulated specific plans to present to the agencies to assist them in improving their performance. Justice attorneys, however, on an *ad hoc* basis have acted in an advisory capacity regarding a number of Title VI matters. For example, the Title VI Section has assisted the Law Enforcement Assistance Administration (LEAA) in preparing civil rights compliance forms and has participated in civil rights training for LEAA auditors; advised Department of Agriculture officials on what steps must be taken by State Extension Services not yet in compliance with Title VI; commented on proposed HUD standards concerning affirmative marketing and project selection; and provided opinions on the applicability of Title VI to various programs. The Title VI Section also has met with Office of Management and Budget examiners in an effort to explain existing civil rights problems to them.

Title VI staff have not in the last six months participated with any agency staff in either a Title VI compliance review or a complaint investigation and do not view this as their primary role. However, they are prepared to assist agencies in this regard, if requested. In view of the failure of some agencies to undertake an effective compliance program, such participation, whether as a primary function or not, would seem warranted in those cases where an agency has not demonstrated a full understanding of the Title VI implications of its programs.

The ability of the Title VI Section to adequately monitor the compliance activities of agencies is impaired by the Department's failure to utilize a standard report form. In April 1971, the Department of Justice reported that a form which would provide a more complete picture of minority program impact, as well as of compliance activity, was being drafted. It was expected that this revised form would be ready by June of 1971. As of October 1971, however, it still was in the process of being developed.

The Commission has continued to recommend that Executive Order 11247 be amended to authorize the Attorney General to direct departments and agencies to take specific compliance and enforcement actions. No action has been taken in this regard. Under its existing authority, Justice does not believe it may require other agencies to impose any particular sanctions. Nor, under the Department's construction of the Executive order, does the Attorney General even urge agencies to impose such sanctions. The Justice Department's narrow construction of its "coordination" responsibility has contributed to weak enforcement of Title VI. The principal method used by the agencies to deal with instances of noncompliance continues to be extended negotiations aimed at ultimately bringing about voluntary compliance. Since January 1, 1971, the only instances of Title VI administrative enforcement proceedings have been those initiated by HEW and one by the Veterans Administration (which found the recipient in noncompliance in Fiscal Year 1970, noticed it for hearing in the first half of Fiscal Year 1971, and terminated its assistance in the second half of Fiscal Year 1971). This reluctance to impose administrative or judicial sanctions has led to excessively protracted negotiations.

Other Nonlitigative Matters

Uniform Title VI Amendments

Another area where Justice performance has been less than adequate has been with respect to the issuance of the amended Title VI regulations. In July of 1967, after nearly three years experience with agencies' original Title VI regulations, it was decided that uniform amendments to the regulations were necessary. Proposed amendments were submitted to President Johnson in January of 1969, but were not signed. Although the Department of Transportation's Title VI regulations were finally approved in June 1970, the amended regulations of the other agencies have still not been acted upon. Justice now anticipates that the amendments will appear shortly in the Federal Register as proposed rule-making in order to afford the public an opportunity to comment. This procedure necessarily will involve additional delay while comments are evaluated.

Planning Boards

This Commission previously has called attention to the issue of the applicability of Title VI to membership on planning, advisory, or supervisory boards which receive Federal financial assistance, serve as the conduits for such assistance, or develop comprehensive plans which establish how Federal funds will be allocated. The Justice Department has not developed a position regarding this. Its current position is that the answer "may well depend on the facts in each case". Recognition of this, however, does not obviate the need for the Department to provide some general guidance and criteria for making case-by-case determinations.

Equal Employment Opportunity (EEO) Regulations

DOJ's Title VI Section continues to play a semiactive role in assisting agencies in determining their authority to issue EEO regulations covering their recipients.* In response to an inquiry from the Federal Power Commission (FPC), Justice recently expressed the view that the FPC had authority to issue a regulation concerning the employment practices of many of its regulatees. However, the response was provided a year and nine months after it was requested, well after the FPC made a binding contrary decision.

The Justice Department has also commented on the appropriateness of similar regulations proposed by other agencies (e.g., HUD) but takes the position that the issuance of the regulations must be determined by the relevant agency. This position is predicated on the fact that such regulations are not based on Title VI and, consequently, Executive Order 11247 does not give the Department any jurisdiction.

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* Title VI affords only limited coverage of a recipient's employment practices, i.e., where a primary purpose of the Federal financial assistance is to provide employment. The proposed amendments to the Title VI regulations will extend this coverage to the employment practices of a recipient which tend to affect the equality of treatment afforded the intended beneficiaries even where a primary purpose is not to generate employment; such a provision has already been incorporated into the Department of Transportation's existing Title VI regulations. In addition, other agencies, often in conjunction with the Justice Department, have determined that the employment practices of all their recipients, not otherwise covered by Title VI, may be reached under other existing legislative authority (see, e.g., regulations of the Law Enforcement Assistance Administration, Office of Economic Opportunity, and SBA.)

Legal Opinions

In 1970, DOJ reported that pursuant to its coordinating authority under the Executive order, it would be a repository for legal opinions relating to Title VI and that opinions having general applicability would be distributed to all Title VI agencies. Although DOJ originally speculated that this would be accomplished by July of 1971, to date, it has not been done. The Title VI Section, however, has continued to respond to agency requests for legal opinions concerning Title VI, although not always in a timely manner.

Racial and Ethnic Data Collection

An attorney in DOJ's Title VI Section played a key role as Chairman of the Subcommittee on Racial Data Collection of the Interagency Committee on Uniform Civil Rights Policies.* In April 1971, this Subcommittee issued a report which surveyed Federal racial data collection policies. Since then, the Committee has conducted follow-up meetings with the 13 agencies covered in the report. The purpose of the meetings has been to explain the recommendations of the report, to review each agency's specific needs in developing a racial data collection and use system, and to assist the agencies in developing a plan of action for the improvement of their racial data collection and use efforts. Final plans for improving racial data capabilities have already been formulated by two agencies, the Departments of Agriculture and HEW, and draft plans have been prepared for the Departments of Commerce, HUD, Interior, Justice (LEAA), Labor, and Transportation.

Title VI Section Litigation

In its October 1970 report, this Commission recommended that the Justice Department's Title VI Office not invest a significant amount of its manpower in litigation, but rather, emphasize evaluation of agency administrative actions and procedures. In April 1971, DOJ indicated that the responsibility for conducting litigation of the type which has been handled by the Title VI office would be shifted to other parts of the Department, thus freeing the Title VI staff for nonlitigative activities.

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* This subcommittee was established by the Office of Economic Opportunity in the Fall of 1970 as part of an effort to provide improve coordination of agency's civil rights efforts.

Staff from the Title VI Section, however, continue to be involved in litigation. For example, its staff played an active role in the suits against the Alabama and Mississippi Extension Services (see section relating to the Department of Agriculture), and have assisted in the preparation of amicus curiae briefs filed, or to be filed, in cases against the Mississippi Highway Patrol (alleging racially discriminatory employment practices; decided September 29, 1971) and against the Boston Police Department (also alleging discriminatory employment practices). In the latter case, it was the Title VI Section which also conducted the preliminary investigation.

The Title VI Section's continued participation in litigative matters now seems more tangentialto their upgraded nonlitigative activities.

Evaluation

The Justice Department has begun to accord a higher priority to its nonlitigative responsibility for coordinating the Title VI activities of the Federal Government. Also, the office responsible for monitoring Title VI activities has been elevated to the status of a Section within the Civil Rights Division and the Title VI staff have conducted extensive analyses of the enforcement programs of many agencies with Title VI responsibilities. Nonetheless, its efforts have not proved to be adequate to deal with numerous problems besetting the Government's Title VI effort. Its staff needs to be enlarged so that they can monitor the activities of all of the agencies with significant Title VI programs. Moreover, the Title VI Section must develop specific plans for utilizing the information they receive from reviewing agency efforts. Even more importantly, the Department must assume a more affirmative posture in terms of urging agencies to correct deficiencies in their enforcement programs.

DEPARTMENT OF AGRICULTURE (DOA)*

Staffing and Organization

The position of the Director of the Department Office of Equal Opportunity was filled in August of 1971 at a GS-17 level, which represented a one-grade increase over the former head of the Department's civil rights operations.

The Title VI staffing patterns for the Office of Equal Opportunity and the constituent services and administrations have not changed substantially since this Commission's May 1971 followup survey. Although there had been a decided improvement in the civil rights staff size at DOA between the time this Commission issued its October 1970 report and the May 1971 followup, the present staffing level still falls short of that necessary for full effectiveness of the enforcement effort.

In addition to conducting one of the most extensive civil rights training programs for agency personnel in Government, DOA currently is developing a special training program for persons assigned compliance review responsibilities. This has been undertaken in recognition of the fact that the compliance review process used in the past was not as effective as possible.

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* The DOA has twelve operating services and administrations with Title VI responsibilities: Agricultural Research Service (ARS), Agricultural Stabilization and Conservation Service (ASCS), Consumer and Marketing Service (CMS), Cooperative State Research Service (CSRS), Extension Service (ES), Farmer Cooperative Service (FCS), Farmers Home Administration (FHA), Food and Nutrition Service (FNS), Forest Service (FS), Packers and Stockyards Administration (PSA), Rural Electrification Administration (REA), and Soil Conservation Service (SCS).

Compliance Program

The Department has revised its compliance review forms and procedures and this has resulted in an improved compliance program. These positive measures, however, have been undermined by a number of other factors.

There continues to be a significant disparity between the total number of recipients subject to Title VI and the number of corresponding reviews conducted by some of the Department's constituent agencies. For example, in the last half of Fiscal Year 1971, the Farmers Home Administration reviewed only 154 of its more than 6,700 recipients. In addition, the Consumer and Marketing Service reviewed only five of its 118 recipients.

The overwhelming majority (53,573) of all DOA reviews conducted were conducted on FNS assisted programs but most of these were performed by State agency personnel. The fact that of the more than 53,000 FNS-funded facilities reviewed, only 24 were found to be in noncompliance, suggests that many of these reviews were perfunctory.

Earlier this year the DOA Office of Equal Opportunity Staff conducted a county wide review of all DOA assisted programs in Greene County, Alabama, making many on-the-spot corrections. Despite the success of this effort -- a technique this Commission has urged other agencies to adopt -- DOA has not repeated this highly useful compliance program device.

Extension Service

There is another factor which seriously clouds any favorable evaluation of DOA's overall compliance effort --- the blatant acquiescence by the Extension Service (ES) in the continued overt discrimination by many of its recipients.

The failure to provide equal opportunity in extension services often means that the minority rural family is denied information by which it could more effectively benefit from other DOA - assisted service programs.

As indicated in this Commission's May 1971 follow-up report, the State Extension Services at eleven land grant universities, which are recipients of DOA financial assistance, have not provided Title VI assurances of compliance despite the clear requirement to do so since 1965. Although the history of this problem is complicated, it merits scrutiny for it demonstrates an almost total disregard of the letter, much less the spirit, of the law.

DOA's Office of Inspector General conducted civil rights audits of State Extension Services in 1965, 1967, and 1969. The audits substantiated findings by this Commission in a 1965 study and subsequent studies, all of which found wide-spread discrimination in both the services and employment practices of State Extension Services. It was not until June 1970, however, that each of the eleven State Extension Services** was requested by the DOA Extension Service either to submit an assurance of nondiscrimination or update its compliance plan. Eight of the States submitted assurances while three submitted revised plans or alternative proposals. Only three assurances were accepted. Subsequently, DOA's Director of Science and Education issued, in September of 1970, a policy statement requiring each State Extension Service which had not yet submitted a Title VI assurance to conduct a Statewide compliance review of all its operating units before the assurance would be accepted by DOA. It also was decided subsequently that the DOA Extension Service Administrator must also perform a compliance review of each State.

As a result of this policy, during the second half of Fiscal Year 1971 State Extension personnel conducted 1,965 compliance reviews of their operating units. Copies of these reviews, however, were not submitted to the DOA Extension Service. Furthermore, even the procedures for conducting these reviews are determined within each of the State Extension Services. Therefore, it is likely that the scope and quality of these reviews, although they must be consistent with general

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** Alabama, Arkansas, Florida, Georgia, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Texas, and Virginia.

criteria established by a Departmental policy, varied considerably. There currently exists no system for assuring that the reviews are of uniformly high quality.

The Extension Service Administrator has not yet carried out his responsibilities under the new Departmental policy -- performing his own review of each State to secure evidence of complete compliance. Currently, the guidelines and instruments for conducting such reviews are only being developed, although, according to DOA, "it is anticipated that these reviews will be conducted during the period November 1971 through January 1972."

The reviews by the Department will be conducted initially in selected counties in nine of the eleven States. Two of the States, Alabama and Mississippi, will not be reviewed at this time because civil suits were filed against each of the State Extension Services and the Justice Department intervened on the side of the plaintiffs. A decision, recently rendered in the Alabama suit in favor of the plaintiffs, found pervasive racial discrimination in both the defendant's employment practices and distribution of services. The court found that the discrimination had so permeated the operations of the Alabama Extension Service that it felt compelled to issue a detailed decree which not only enjoined discrimination but also prescribed procedures for preventing future discrimination and for correcting the effects of past discrimination. (See Strain, et al. v. Philpott, et al., Civil Action No. 840-E, M.D. Ala. 1971).

No target date for compliance has been imposed on the States not involved in litigation nor is enforcement action contemplated, unless, according to DOA, "it is determined that a State Extension Service is in legal noncompliance with Title VI...." This, again, is contingent on the findings and evaluations of the reviews which are not subject to evaluation by Federal Extension Service personnel, and on appropriate reviews conducted by DOA Extension Service staff.

In a recent meeting with the Department of Justice, Extension Service officials indicated a willingness to apply the legal requirements of the Strain decision to all State Extension Services as soon as Justice develops a list of the requirements and the Secretary of Agriculture directs it to apply them. The Justice Department is currently in the process of developing a memorandum for DOA delineating the meaning of Strain and its application.

Data Collection

In July of 1970, a Departmental policy was issued which set forth new and expanded requirements for racial and ethnic data collection, with the result that most agencies gathered such information for the first time in Fiscal Year 1971. Some DOA agencies, such as FHA and ASCS, already were collecting such information. FNS, however, has not yet implemented its data collection system in the school lunch programs. The FNS form for obtaining racial and ethnic data for this program is currently at the Office of Management and Budget and is expected to be approved and ready for distribution by February 1972.

Since this Commission's May 1971 followup, no substantive changes have been made in DOA's collection of racial and ethnic data for purposes of evaluating Title VI compliance. DOA services and administrations, however, are currently in the process of developing guidelines for program managers in the use of racial and ethnic participation data to assure efficient and equitable distribution of services to all intended program beneficiaries.

Evaluation

Although there remains a need for additional civil rights staff both in the Departmental Office of Equal Opportunity and in some of the operating services or administration, the Department has shown some improvement in this regard during the last year. The same is true in such other areas as training and data collection.

Improvements in the overall DOA Title VI program have been undermined by the grossly inadequate performance of the Extension Service, an agency whose program is fundamental to other agricultural programs. The Extension Service has consistently failed to discharge its Title VI responsibility to take forceful corrective action against noncomplying recipients. Specifically, the Extension Service compliance program has been marked by unparalleled procrastination in dealing with the numerous State Extension Services which have failed even to file acceptable Title VI assurances. Seven years after the enactment of the Civil Rights Act of 1964, these noncomplying recipients continue to receive financial assistance from DOA.

DEPARTMENT OF COMMERCE (DOC)

Organization, Staffing, and Training

The Department of Commerce's organizational structure for Title VI enforcement continues to remain fragmented. The Assistant Secretary for Administration has overall Departmental responsibility for Title VI activities. He has a Special Assistant for Equal Opportunity, a GS-15, who along with one staff assistant, coordinates and reviews the Title VI efforts of the two primary operating Administrations, the Maritime Administration and the Economic Development Administration (EDA). The grade of the Special Assistant is the same as that of the directors of equal opportunity of DOC's constituent Administrations, but lower than that of many program directors. No real power or authority is exercised by the Departmental Equal Opportunity Office over the equal opportunity programs or offices of the Administrations.

The bulk of DOC's Title VI activities rests with EDA, which provides funds for public works and economic development programs. EDA's Director of Equal Opportunity reports to the Assistant Secretary and any differences of opinion between EDA program staff and the Equal Opportunity Office are resolved at the Assistant Secretary level. The relationship between EDA's regional offices and its Office of Equal Opportunity reflects structural deficiencies. Regional Equal Opportunity Officers report to EDA's Director of Equal Opportunity through their Regional Directors, to whom they are responsible for many aspects of their work. The lack of line authority of EDA's civil rights director is a major impediment to effective enforcement of Title VI.

EDA's professional staff devoting more than half time to Title VI enforcement has been increased by two to a total of 15 persons. All former vacancies have been filled and a better distribution of manpower has been accomplished, with nine positions in the field and two persons assigned to several of the more demanding area offices.

No formal training sessions devoted entirely to Title VI matters are provided. Title VI is included as one of the subjects discussed at the annual three-day general training session held for all regional and headquarters equal opportunity staff. All new civil rights employees are trained in the Washington office before being assigned to the field. Specific Title VI training for program staff is not provided although equal opportunity personnel do give talks on the civil rights implications of new programs.

Compliance Program

EDA continues to conduct a significant number of pre-approval reviews, with 155 conducted in the last half of Fiscal Year 1971. On-site compliance reviews have been conducted primarily of employment practices of recipients almost to the exclusion of reviews of sites selected for public work facilities. The actual number of on-site compliance reviews completed in the second half of Fiscal Year 71 fell short of the agency's own goal by 50 percent. In April 1971, EDA stated that the number of compliance reviews will increase by 50 for the last half of Fiscal Year 71. However, only 25 were completed on more than 3,000 eligible recipients. Eight of the 25 recipients reviewed were found in noncompliance. Action taken to bring the recipients into compliance has been limited. In some instances all that was required by EDA was the filing of an affirmative action plan; in one case, no action was taken due to the transfer of the equal opportunity specialist who originally conducted the review.

To date, no case has gone to formal proceedings. The Administration tends to rely on methods such as the deferral of project money and the threat of requiring accelerated repayment of business loans, to resolve cases of noncompliance.

Data Collection

EDA collects racial and ethnic data for purposes of evaluating Title VI compliance. The data are primarily used in pre-approval reviews to discern a potential recipient's equal employment opportunity posture; to establish an affirmative action program; to determine the representativeness of planning organizations and staffing; and to evaluate overall compliance posture.

Racial and ethnic data submitted in proposals for EDA assistance in water and sewer facilities projects are examined at pre-application conferences and throughout the project application process in order to assure that the benefits of EDA assistance will be made available on a nondiscriminatory basis and, if the project will provide residential service, that it will serve as many of the minority and low-income members of the community as possible. EDA plans to study the extent which a computerized data bank system can be utilized in measuring the overall effectiveness of its Title VI compliance program.

Miscellaneous

An EDA directive, effective June 1, 1971, sets forth its policy regarding participation of minority persons on EDA-assisted planning bodies. The Department of Justice found the proposed directive to be entirely consistent with the purposes and objectives of Title VI. The directive establishes minimum minority representation requirements and implementation procedures for the selection and approval of minority representatives. Affirmative action program requirements for the employment of minority persons on the staffs of such organizations are also included.

Evaluation

The DOC's organization for Title VI enforcement is still too weak for effective implementation. A Departmental staff of two professionals without line authority is insufficient for the task of policy development and coordination.

EDA, however, has made significant structural improvements in its Title VI program. It has established systematic and continuous pre-approval and compliance review programs, developed an effective data collection system,and issued a directive requiring minority participation on EDA-assisted planning bodies. Progress in increasing the number of on-site reviews, however,has been extremely slow.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE (HEW)*

Organization, Staffing, and Training

Among the Title VI responsibilities of the Office for Civil Rights (OCR) of the Department of Health, Education, and Welfare are health and social services programs.** In addition to those responsibilities it conducts compliance activities at medical facilities under delegated authority from all other Federal agencies with financial assistance programs for medical facilities.

The Director of OCR reports directly to the Secretary and also has the title of Special Assistant to the Secretary. There are 179 full-time professional staff members in OCR's headquarters and regional offices who devote more than half their time to Title VI enforcement. The Civil Rights Division of the Office of General Counsel which spends more than two-thirds of its time on Title VI matters, has 19 attorneys. The OCR staff devote most of their time to matters relating to contract compliance and education.

HEW compliance reviews in the health and social area are often conducted jointly with representatives of the affected State agencies. Training programs have been initiated to improve the quality of compliance activities by State staffs. In Fiscal Year 1971, 28 training programs involving 300 State staff members were conducted in 12 States. These training programs, however, have not included several States where problems related to the adequacy of compliance reviews were previously identified.

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* HEW has responsibility for Title VI in the areas of education, health, and social services. This section will only deal with its activities relating to health and social services grants and facilities. For a discussion of the HEW compliance program as it applies to higher education and elementary and secondary education see the section on Education.

** Social services is a broad term used to cover welfare, vocational rehabilitation, child welfare, and aging programs.

Compliance Program

Health and social services compliance activities fall into four major categories: (1) State agency review and followup (2) routine compliance reviews; (3) complaints investigations; and (4) initial clearance of facilities.

State agency reviews* emphasize the operations of State agencies as a whole, rather than the conditions at particular medical and social service facilities. OCR has required State agencies to conduct compliance reviews of the hospitals and nursing homes within their States. These reviews are audited by OCR on a sampling basis. When OCR personnel visit a facility previously reviewed by State officials they are accompanied by representatives of the State agency. As of July 1971, HEW had completed field work in its audit of such activities in 43 States and where noncompliance was found corrective action was taken or was under negotiations.**

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* HEW has concentrated emphasis on State reviews. Such reviews extend not only to review of the State agency but to the agency local counterparts, associated social service facilities, hospitals, nursing homes, child care centers, and the like that provide direct welfare and health benefits.

** According to May 1971 testimony before the House Subcommittee on Appropriations HEW officials indicate that during Fiscal Year 1972 follow-up activities, to assure that negotiated agreements are implemented will receive major emphasis. In addition they noted that the compliance staff will continue sampling of 7,000 hospitals; 5,000 extended care facilities; 2,000 home health agencies which are medicare participants; and 1,200 Headstart programs.

Because of the large number (almost 15,000) of HEW recipients subject to Title VI, the Department has had to relv heavily on compliance reporting surveys. Compliance surveys of hospitals and nursing homes were conducted in 1967 and 1969 to determine the progress of compliance in minority admissions, room assignments, minority physician appointments to hospital staff,and minority participation in hospital training programs.

While the 1969 survey showed some improvement in services to minorities--75 percent of the approximately 6,500 hospitals surveyed reported minority persons as patients, an increase of 25 percent over figures in 1966--it also highlighted several areas of concern in regard to compliance problems that needed followup. One such area was the utilization of extended care facilities. An analysis of the individual reports demonstrated that a substantial number of facilities continued to serve patients exclusively of one race, despite the fact they had signed assurances of open admission policies. These surveys emphasized the need for intensive effort to review health services facilities.

In Fiscal Year 1971, more than 1,300 on-site compliance reviews were conducted of health and social services facilities. This number is less than 10 percent of the total recipients subject to Title VI. During this time period HEW staff also performed 10 State agency reviews. During the period January 1 - June 30, 1971, OCR received 101 complaints under Title VI. Of those received, only 64 have been investigated and resolved.

Hospitals and extended care facilities applying to participate in the Medicare program or facilities already participating in the program where ownership has changed require Title VI clearance. For the most part, clearance is granted on the basis of reports submitted by the facilities, but where there is a question as to actual compliance, on-site reviews are made. In the latter half of Fiscal Year 1971, OCR conducted 445 pre-approval Title VI reviews.

The mechanisms of a comprehensive compliance program are well established at HEW. The quality, however, of compliance activities, such as on-site reviews and complaint investigations, often varies in terms of thoroughness and timeliness. In Fiscal Year 1971 no enforcement actions were taken against health and social services agencies for Title VI violations.

Data Collection

HEW has directed all program managers to submit annually, to OCR, data on program participation by race and ethnicity. While the Department specifies that data should be submitted separately for blacks, Spanish surnamed Americans, Orientals, and American Indians, HEW has issued no other policy or guidelines for the collection of racial and ethnic data. In fact, it has not indicated that the data submitted to OCR must be collected on the basis of actual participation, rather than through estimates or extrapolation from other sources of data. HEW also has not indicated how up-to-date the submissions to OCR must be.

OCR has expressed a particular interest in racial and ethnic data collection for certain aspects of HEW programs. In these instances, data are often complete. For example, in 1969, the more than 10,000 hospitals and extended care facilities participating in Medicare and other Federal programs submitted data that reflected the status of their compliance with requirements of Title VI of the Civil Rights Act of 1964.

To date, however, the emphasis of OCR has been on insuring that racial and ethnic data are submitted by the various HEW programs and it has not yet focused on the quality of these data. As a result, the validity of these data is questionable.

Further, most data submitted to OCR reflect national figures. Thus, if the method of obtaining these data was estimation, there are often no data available for analysis by project, State, or even region.

On the whole, there is very little detailed information available concerning the distribution of most HEW program benefits to minority group citizens, and little data available which can be used to assess compliance by HEW recipients with civil rights legislation and regulations.

Evaluation

In general HEW's compliance program continues to operate at a relatively effective level. It consists of a compliance reporting system, an ongoing program of compliance reviews, and a mechanism for the collection of significant amounts of racial and ethnic data.

Yet only a small percentage of the total number of recipients are reviewed. The majority of those reviewed are by State agency personnel, some of whose reviews have not been entirely adequate. Further, policies regarding data collection still have not been clearly developed. This lack of defined standards continues to hinder full implementation of Title VI enforcement mechanisms.

DEPARTMENT OF THE INTERIOR (DOI)*

Organization, Staffing and Training

The Title VI program of the Department of Interior (DOI) continues to be in the "transitional phase" of a reorganization that began January 6, 1971. The Title VI responsibilities, which had been assigned to DOI's various bureaus, have been shifted to the Departmental Office for Equal Opportunity. The Director of that office, a GS-16, has day-to-day supervisory responsibility for Title VI activities. He does not report to the Secretary directly, but rather to the Under Secretary.

Title VI staff is entirely based in the national office. The Title VI Office has recently hired two full-time professionals and a third is to be transferred from the contract compliance program within 30 days. The proposed staffing level is six full-time professionals. Recruitment, however, has been extremely slow for the remaining three full-time positions. The present staff has had no Title VI training since the Department does not conduct a training program of its own, nor utilize any other source.

Compliance Program

On-site reviews of recipients are the most effective methods of enforcing Title VI and DOI has now begun to implement such a compliance program. To date, however, the Title VI Office has performed only one review of its more than 650 recipients and subrecipients of development and planning recreation grants of the Bureau of Outdoor Recreation (BOR).

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*The Department's program with the greatest Title VI impact in terms of dollars and recipient contact is the funding of State and local parks by the Bureau of Outdoor Recreation.

Even in the case of DOI's one review, its performance was mixed. In that instance this Commission requested on May 8, 1970, that in view of the fact that the Parks Department booklet of the State of Virginia conveyed the impression that the State parks were still operated on a racially discriminatory basis, the Department of Interior conduct a compliance review of State. The review was not undertaken until 13 months later, after the Commission had written to DOI on six different occasions. Although the investigation was thorough and resulted in a finding of noncompliance, no meeting was held to discuss the recipient's compliance status until September 1971, after the Summer recreation season had ended.

Even after finding noncompliance in its only review, the Virginia State Park System, DOI did not schedule reviews of additional recipients until the late Fall. Nor were letters sent to other States, especially those which formerly operated dual park systems, to inform them of the Department's standards for compliance and to urge them to initiate the changes necessary to achieve those standards. DOI is now, however, in the process of developing guidelines which it plans to send to all States within 3 months. No comprehensive Title VI review program, however, has yet been formulated.

At this time DOI has no pre-approval review system. Two reasons are ascribed for the failure to adopt this useful Title VI mechanism. First, the Department believes that the possibilities of discrimination in planning grants are not great.*

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*The Commission disagrees with this view. The location of parks and the type of facilities provided can easily delineate who will use them. Therefore, a review to determine whether a proposed State outdoor recreation plan will best serve the needs of all State residents should be conducted prior to the awarding of planning grants.

Second, in the last 6 months the grant approving process of BOR has been completely decentralized and all grants are presently approved by BOR regional offices regardless of their dollar value. This change has delayed the Title VI Office's plans for conducting pre-approval reviews. The use of a pre-approval system is still under consideration with a proposed implementation date of January 1, 1972.

Data Collection

Few Federal agencies maintain compliance reporting systems, including a systematic collection of racial and ethnic data, that would allow them to evaluate the effectiveness of their programs in terms of whether program benefits are actually reaching all beneficiaries on an equitable basis. DOI is among those that do not have such a reporting system. Racial and ethnic data are only required in remedial situations where some form of discrimination has been found. In the Department's only such case, the recipient was requested to conduct a visual count, by race, of users of the State parks. When DOI compared the State's figures with those collected by its own staff it found serious discrepancies. This experience reinforces the need for the collection of data on a more continuous and systematic basis. Data are a necessary if patterns of inequities are to be discerned and a compliance review priority system developed.

Employment Practices of Recipients.

Although DOI has sought changes in the employment practices of the Virginia State Park System as a remedial action, it has not formulated a regulation to prohibit employment discrimination by all recipients. The Department is presently considering issuing such a regulation, based not on the authority of Title VI, but on the authority of the Constitution.

Evaluation

The Department of the Interior's enforcement of Title VI has been grossly inadequate. Six years after the passage of the law, the Department is still in the process of assigning a staff and developing a compliance program. The Commission has received similar assurances from DOI concerning the status of its compliance program for the past 3 years. The fact remains that DOI has yet to redeem its promise to implement its Title VI responsibilities. Until it does, there can be no assurance of equal access to the benefits offered by our park systems.

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION (LEAA)*
DEPARTMENT OF JUSTICE (DOJ)

Staffing and Organization

Although the Chief of LEAA's Office of Civil Rights Compliance (OCRC) presently reports directly to the Administrator, his grade level (recently promoted to a GS-15) is still below that of program administrators. While the effectiveness of an agency civil rights director is not necessarily a function of his grade, more often than not, his or her ability to deal with program people on an equal basis is affected by this.

In terms of overall effectiveness, however, staff size is an even more significant factor and at LEAA the civil rights effort is markedly understaffed. At present, there are only three professionals on the civil rights staff, one of whom joined the OCRC as recently as October 1971. Despite a prior indication by LEAA that it was "reviewing the staffing level of the Office of Civil Rights Compliance with a view toward amending the agency's budget request for Fiscal Year 1972," the number of authorized professional positions remains at four (with one position yet to be filled). OCRC has access to other LEAA personnel, such as the audit staff, but their contribution to date has not been significant.

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* For purposes of this report, LEAA's activity in enforcing its equal employment opportunity regulations, which require nondiscrimination in the employment practices of recipients of LEAA financial assistance, are considered together with its Title VI responsibilities.

Other DOJ constituent agencies which provide assistance covered by Title VI (e.g., the Federal Bureau of Investigation) are not within the scope of this report.

Compliance Program

LEAA's compliance program has not noticeably improved since this Commission's October 1970 report. LEAA still has not conducted a satisfactory Title VI or equal employement opportunity (EEO) compliance review*. At this juncture, LEAA has not even determined precisely what aspects of its program are covered by Title VI.

LEAA's earlier assertion that the audit staff would conduct civil rights reviews in 25 States once that staff reached its Fiscal Year 1972 authorized strength remains an unfulfilled promise. Moreover, the guidelines for conducting such reviews, which were being drafted as of April 1971 and anticipated to be in use by July of 1971, have not yet been completed.

The focus of LEAA's compliance program thus far has been on processing of complaints, but even here LEAA's performance has been inadequate. For example, of the 18 complaints LEAA received during the second half of Fiscal Year 1971,which relate to employment or Title VI matters, twelve** are still pending. In one case LEAA is awaiting information from a recipient concerning its allocation of funds in order to respond to a compliant it received 5 months earlier.

LEAA also has not conducted any pre-approval reviews. According to the Administrator, because of the block grant nature of the program, it is unlikely that such reviews will be conducted in the future*.

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* Although the audit staff conducted a few Title VI reviews, the quality of those reviews was admitted by LEAA to be unsatisfactory.

** Five of these relate to complaints against the same organization.

The only enforcement actions undertaken relating to LEAA activities have been amicus curiae (friend of the Court) briefs filed by the Department of Justice in two cases involving LEAA recipients.** The Justice Department intervened in May of 1971 long after the suits were initiated (in July and September of 1970) as a result of a great amount of external pressure put on the Department to take some action against the discriminatory employment practices of law enforcement agencies. Furthermore, the cases demonstrate an overriding preference for judicial enforcement rather than the use of administrative actions and sanctions. This preference is expressly stated in the agency's EEO regulations.

Data Collection

Although LEAA has developed a comprehensive compliance report form, aimed mostly at eliciting information on the employment practices of recipient law enforcement agencies (i.e., State and local police agencies and sheriffs offices), the form still has not been approved. Moreover, it does not cover most of LEAA's recipients (e.g., correctional institutions, court systems). A report form covering those recipients will probably not be distributed until mid-1972.

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* It is difficult to see why the block grant nature of the program necessarily precludes pre-approval reviews. Such reviews might consider the civil rights implications of the State comprehensive plans and the racial and ethnic composition of the board membership of the State planning agencies (providing both of these areas are ultimately construed to be Title VI issues) as well as services provided by law enforcement agencies. For purposes of the regulations, employment and population statistical comparisons, once available, could be used as a screening device in a pre-award process.

** The suits, in part, alleged racially discriminatory employment procedures by officials of the Mississippi Highway Patrol and the Boston Police Department. An injunction aimed at ending discriminatory hiring policies was recently handed down in the Mississippi case; nevertheless, during the pendency of this suit, LEAA continued to fund the defendant.

LEAA has devised a sophisticated data processing system for analyzing the information on the completed report forms, but the forms, themselves, will not be ready for distribution until February 1972, at the earliest. Thus the responses will not be completed and analyzed until July 1972, approximately a year and a half after the EEO regulations were issued. Furthermore, it is the position of the OCRC Chief that until the compliance report forms are returned and analyzed he will not be prepared to determine what future compliance program might be desirable.*

LEAA has provided a 14-month grant to a consultant organization to develop a method by which LEAA can evaluate the operation of its total agency program. A part of the study will be directed to answering how LEAA can better evaluate participation by minority and poor citizens in benefits of the LEAA program.

Miscellaneous

The question of whether Title VI applies to the selection of State planning agency board members continues to be under consideration by

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* What this position fails to recognize is the value of articulating a preplanned agenda or framework for the compliance program. By describing how one plans to act, one need not deal with individual problems or noncompliance decisions but simply formulate an approach to the types of compliance needs that are likely to arise.

LEAA and the Justice Department's Civil Rights Division. This question was raised in a pending suit originally filed in 1969. Justice's reluctance to make a determination regarding this issue is apparently due to the pendency of the litigation. In fact, the LEAA Administrator has indicated that the agency would be guided by a determination of the courts. The pending suit, however, does not obviate LEAA's responsibility for making such a determination, especially in view of the fact that as early as May of 1969 an official in the Department's Civil Rights Division expressed the opinion that Title VI probably applied.*

One affirmative feature of LEAA's current civil rights program is a 2-year, $390,000 technical assistance grant LEAA recently made to Marquette University Law School to establish a "Center for Criminal Justice Agency Organization and Minority Employment Opportunities," the principal purpose of which will be to provide technical assistance in the recruitment, promotion, and retention of minority personnel to law enforcement agencies requesting such assistance.

Evaluation

Overall, LEAA's civil rights performance has been grossly inadequate. The Office of Civil Rights Compliance continues to be severly understaffed. Moreover, LEAA's compliance program is virtually nonexistent, with the exception of an occasional compliant investigation. The importance of the anticipated issuance of a compliance report form is diminished by the apparent lack of planning on what will be done with this information once collected.

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* The LEAA Administrator has this month indicated that the agency is now in the process of surveying the racial and ethnic composition of State and regional planning bodies. Further, he wrote that where minority representation on these bodies seems disproportionately low, he will ask for more equitable representation.

DEPARTMENT OF LABOR (DOL)*

Staff Organization

The Title VI enforcement effort of DOL remains in a decentralized structure. The Departmental Office of Equal Employment Opportunity (OEEO) operates in an overseeing and advisory capacity and has responsibility for developing policy and procedural guidelines, providing technical assistance, training staff, and monitoring the activity of the regional civil rights staff. Compliance reviews, complaint investigations, negotiations, and liaison with State agencies and other program sponsors are the responsibility of the regional Equal Employment Opportunity (EEO) staff. That staff reports to the Regional Manpower Administrator (RMA).

In the past 6 months, DOL's civil rights staffing pattern has not changed appreciably. The size of the national OEEO has remained the same (i.e., seven professionals) and the professional staff assigned to the regional offices has increased only from 21 to 25.

There is an overall need to increase the size of the staff assigned day-to-day Title VI responsibilities. Moreover, because of the independence of the regional civil rights activities and the corresponding inability of the OEEO Director to exercise line authority over the regional EEO staff, there is also a need to enlarge substantially the size of the national office staff to assure they are able to perform their monitoring responsibilities adequately by continually conducting on-site evaluations in the regions to determine the accuracy of the regional manpower operations.

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*The Title VI program of the Department of Labor is concerned with two major activities of the Department. The first is the funding of State Employment Service Agencies, which classify applicants into job categories and refer them to jobs or training. The other is the funding of a number of job training programs.

The national OEEO has conducted civil rights training sessions for all regional Manpower Administration staff in eight of the 11 regions. Training has also been provided on separate occasions for the RMA's, regional EEO program specialists, and State Administrators. Civil rights training for most State Employment Service employees, however, is absent.

Compliance Program

During the first half of Fiscal Year 1971, 23 compliance reviews were conducted of State Employment Security (ES) agencies and 32 of contractual programs. In addition, 46 pre-award reviews were made of contractual programs. DOL anticipated that in the second half of Fiscal Year 1971 it would double the number of compliance reviews, but it fell short of that goal. It did, however, conduct 295 pre-award reviews during that time. This contrasts with the number of recipients subject to DOL's Title VI prohibition, 54 State ES agencies and their 2,300 local offices and approximately 11,000 programs under contract with the Manpower Administration (e. g., Neighborhood Youth Corps projects Concentrated Employment Programs). Further, pre-award reviews typically entail the regional EEO person reviewing the contract proposal, contacting State and Federal agencies with EEO responsibilities to ascertain if a prospective contractor has been previously found in noncompliance, contacting the appropriate State employment service to review job orders previously placed by the subject firm, and conferring with company officials regarding employment policies and practices.

The pre-award reviews conducted during the second half of the Fiscal Year 1971 have, for the most part, been limited to desk audits.

Compliance reviews, in the second half of Fiscal Year 1971 revealed 56 instances of noncompliance. None of these programs were terminated because, according to DOL's response, "efforts to negotiate compliance have been successful." In addition, no prospective contractors were barred from participating in a DOL program as a result of findings disclosed in the pre-award reviews.

Where Title VI violations are disclosed, it is the regional offices that deal directly with the State agencies and contractors. The focus of DOL's enforcement program has continued to be on negotiation, rather than enforcement action. In order to monitor the success of this strategy, during the second half of Fiscal Year 1971, representatives of the national OEEO made visits to the regional offices to review the adequacy of the corrective actions taken. Thus far this year they have evaluated the activities of six regional offices and it is anticipated they will complete a survey of three additional regions by February 1972. The surveys have disclosed that some recipients who had been reported to be in compliance were violating Title VI.

The follow-up reviews constitute the only comprehensive monitoring of regional civil rights operations performed by the OEEO. The regional EEO staff do not routinely submit copies of their compliance reviews or complaint investigations for national office concurrence or examination. Aside from the monitoring alluded to above, the only other basis for judging a region's performance is a perfunctory, self-evaluative report submitted by each region every 2 weeks.

One matter of great concern is whether negotiations are handled in an expeditious manner. There are a number of instances in which fund termination or court action would have provided relief within less time than a protracted Labor Department negotiation. A classic example of such a matter is the Government's action against the Ohio Bureau of Employment Security (BES). The Ohio agency was found in noncompliance in early 1968 and the matter referred to the Department of Justice for suit later that year. The suit, however, was held in abeyance while the parties, DOL, the Justice Department, and Ohio BES, attempted to negotiate a settlement. To date, more than 3 years after discrimination was disclosed, there have been no trial and no final settlement approved by the court. Yet Federal funds have continued to flow to the recipient.

Data Collection

DOL has collected racial and ethnic data on applicants being served by local offices of the State ES agencies since 1967. The extensive data which State ES agencies and Manpower Administration contractors are required to maintain on their applicants, claimants, and enrollees were automated in 1970. The DOL analysis of the data, however, has been inadequate in that while DOL computes the number of minority group persons using State ES services, on a national basis there has been no systematic analysis of factors such as salaries and job locations.

The impressive array of data available are analyzed by EEO staff in connection with complaint investigations and compliance reviews to ascertain the extent to which minorities are participating in the programs. However, as noted in a recent interagency report, "the primary deficiency in Labor's racial data system is that the available data are not always used by program people in carrying out their planning and evaluation responsibilities ".**

**The Racial Data Policies and Capabilities of the Federal Government. A Report of the Subcommittee on Racial Data Collection to the Interagency Committee on Uniform Civil Rights Policies and Practicies, at 78 (April 1971).

Employment Practicies of State ES Agencies

In addition to the data mentioned above, the State ES agencies are required to provide data on the racial and ethnic makeup of their staffs. The Manpower Administration, as early as March 1970, issued a policy statement which required that the State Employment Security agencies employ as many workers from minority groups as will assure that all agencies and offices can operate effectively in responding to manpower and employment needs of the community being served. State agencies were required to develop plans for improving minority staffing and upgrading in each local Employment Service and Unemployment Insurance Office and to formulate a State plan for making necessary changes in policies and practices. The State plans are required to be incorporated in the State Agency Plans for Service upon approval by the national office.

Despite the significance of this coverage, the State plans projected through Fiscal Year 1972 do not seem sufficiently affirmative to compensate for the effects of past discrimination. For example, as of August 1970, minority group employment in the Mississippi ES agency was 9.5 percent of a total of 809. Although it was anticipated that minorities would constitute 45 percent of the projected appointments by the end of Fiscal Year 1972, this would only have the effect of raising the level of minority employment to 17 percent in a State which has a minority population in excess of 40 percent.

And in fact, the minority employment in the Mississippi State ES offices has only increased 3.7 percent since 1967. Similar disparities are apparent in other States (e. g., Alabama, North Carolina, South Carolina). Although DOL stressed the need for minority employment to approximate the levels of minority applicants being served, it is uncertain how long DOL will allow the States to take to achieve these levels.

Evaluation

DOL's compliance program has not appreciably improved since this Commission's October 1970 report. The decentralization of the civil rights operation has had a negative impact on the ability of DOL to assure compliance.

Presently, there are not sufficient numbers of either national OEEO staff or regional EEO personnel to fulfill effectively DOL's Title VI obligations. The number of compliance reviews conducted needs to be increased. Moreover, DOL appears to continue to place too much emphasis on seeking voluntary compliance. Finally, while the data collection system is impressive, the use of the data is not sufficiently broad in scope.

OFFICE OF ECONOMIC OPPORTUNITY (OEO)

Organization, Staffing and Training

The Office of Human Rights has responsibility for OEO's Title VI program. Its chief is an Associate Director for Human Rights reporting directly to the Deputy Director and Director of OEO. Each Regional Human Rights Chief works under the guidance and instruction of the Associate Director, while reporting administratively to the Regional Director.

All former vacancies have been filled giving the Agency a total of 27 full-time professional staff members devoting more than half their time to Title VI enforcement. Twelve staff members are assigned to the regional offices. In eight offices there is only one human rights officer.

A Human Rights Training Program for about 700 participants has been scheduled. The participants are to include all senior regional and headquarters personnel and selected program staff ranging in grades from GS-9 to GS-15. Program personnel are to be chosen according to their programmatic assignment and the extent of their input into the programs. Because of the large number of persons involved, a 4-day Initial Trainers Institute will be held and the Human Rights staff will participate.

Compliance Program

The effectiveness of Title VI depends on the methods used by an agency to achieve and monitor compliance. The three primary methods are pre-approval reviews, complaints investigations, and on-site compliance reviews. Generally OEO is weak in its utilization of all three methods.

It has no structured pre-approval civil rights review program. It relies on Regional Human Rights Chiefs, as members of the regional offices' programmatic pre-approval team, to look for negative civil rights aspects of program proposals. The Regional Human Rights staff have authority to appeal to the Associate Director of Human Rights concerning differences that they are not able to resolve at the regional level. While in the second half of Fiscal Year 1971 the number of OEO recipients increased from 1034 to 1517, no formal pre-approval reviews were conducted.

Timeliness in the execution of complaint investigations is another major weakness in the compliance program of OEO. Investigations of complaints are done by the OEO's Inspection Division which has a unit of six civil rights investigators. Yet there has often been a 3-to five-month backlog of work. As of June 30, 1971, more than one third of the complaints received during the second half of Fiscal Year 1971 were still under investigation.

OEO has recently drafted instructions for resolving complaints of discrimination against recipients of OEO assistance in employment, program participation, and benefits. These instructions, which include procedures for filing, processing, and resolving complaints, are to formalize practices currently in use.

The total of 77 compliance reviews conducted in Fiscal Year 1971 fell far short of the OEO's anticipated total of 125. The majority of those reviews conducted were in connection with complaints. Approximately one-third of the recipients reviewed were found in noncompliance. Yet a systematic review of recipients at regular intervals still is not a fundamental part of OEO's compliance effort.

Data Collection

Identification of racial and ethnic groups is required in the application forms for an OEO grant, but this information is not reviewed in any continuous and systematic way for program utilization or compliance review purposes.

Miscellaneous

OEO is in the process of completing instructions to require that those from whom OEO-assisted recipients purchase goods and services be equal employment opportunity employers. The authority for this requirement is not Title VI but the General Grant Conditions of the Office of Economic Opportunity, which prohibit discrimination in all hiring and employment made possible or resulting from a grant.

Evaluation

Despite the upgrading last year of the head of the civil rights office to the position of Associate Director for Human Rights, OEO's Title VI enforcement program is still deficient. No comprehensive compliance program has been developed. OEO does not conduct formal Title VI pre-award reviews, it has not investigated its complaints in a timely manner, and it conducts on-site compliance reviews of only a small number of its recipients. Although steps are being taken to improve OEO's Title VI effort, e.g., the drafting of instructions for resolving discrimination complaints, additional steps need to be taken.

DEPARTMENT OF TRANSPORTATION (DOT)*

Staffing and Organization

On March 15, 1971, the Secretary of Transportation directed his Assistant Secretary for Administration to conduct a definitive study of DOT's organization for carrying out its civil rights responsibilities. While the study, submitted to the Secretary in June of 1971, found that the decentralized civil rights organization is fundamentally sound, the Office of the Assistant Secretary for Administration identified areas where performance could be improved and developed recommendations for internal administrative action, including staff augmentation for the Departmental Office of Civil Rights.

Thus far no action has been taken to implement the above recommendation since the findings and proposed actions are considered as preliminary ones. These matters will be dealt with only after the position of Departmental Director of Civil Rights, currently vacant, is filled. (It has been vacant since about July 1971.)

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* A review of DOT's Title VI enforcement effort requires a collective consideration of the Department's constituent administrations with Title VI responsibilities--Federal Highway Administration (FHWA), Urban Mass Transportation Administration (UMTA), Federal Aviation Administration (FAA), and Coast Guard (CG). The Federal Railroad Administration, the Saint Lawrence Seaway Development Corporation, the National Highway Traffic Safety Administration, and the Transportation Systems Center are not considered in this report.

Of the four constituent administrations of DOT being considered in this report, in addition to the Departmental Office of Civil Rights, only the Coast Guard (which has the most minor Title VI responsibilities of all) employs a professional civil rights staff person who devotes more than half of his time to Title VI matters.* Neither FHWA (which has a total of 42 authorized professional civil rights positions) nor UMTA has assigned even one person to devote more than half of his or her time to Title VI activities, notwithstanding the clear and far-reaching Title VI implications of their respective programs. The FHWA does anticipate, however, hiring a Special Assistant to the Civil Rights Director, who will devote full time to Title VI matters.

The focus of both FHWA's and UMTA's civil rights efforts to date has been in the areas of contract compliance, with Title VI accorded a low priority.

Compliance Program

Despite the significance of its program, in both fiscal and civil rights terms, the FHWA has never conducted a Title VI compliance review. FHWA has, however, recently drafted guidelines for such reviews and has requested FHWA Regional Administrators to conduct interim Title VI compliance reviews of selected State highway departments during the period prior to issuance of the proposed guidelines. Although the guidelines represent a worthwhile effort on the part of FHWA officials to deal effectively with the civil rights implications of their programs, their value is diminished by the apparent lack of criteria for determining noncompliance. Some general criteria for evaluating the compliance status of a recipient may evolve from the interim reviews.

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* The Coast Guard plans to add another staff person who will devote more than half of his time to Title VI enforcement.

The quality and scope of the Title VI compliance reviews of the other constituent administrations vary considerably. The Title VI compliance reviews performed by UMTA were principally reviews of the employment practices of sponsors and contractors. Consideration of such significant Title VI issues as the sites of projects is not in evidence in any of the reviews furnished. Further, in the last half of Fiscal Year 1971 UMTA conducted only 48 reviews of this limited variety although there were 623 recipients subject to Title VI.

The Coast Guard, which provides some assistance to Auxiliaries, i.e., groups of private citizens organized to promote safety in small boating, conducted 17 Title VI compliance reviews in the second half of Fiscal Year 1971, thus covering more than ten percent of all of their recipients. The reviews typically examined the services provided by the Auxiliaries, namely safety training classes and courtesy inspections as well as membership. Despite some deficiencies in the review process, the Coast Guard's efforts in this area are considerably more comprehensive than the corresponding activities of its sister DOT agencies.

FAA civil rights personnel conducted only one Title VI compliance review in the last half of Fiscal Year 1971, although the Administration had more than 1,500 recipients. This was somewhat less than the 14 reviews DOT predicted, in April 1971, that FAA would conduct. The review, which was a comprehensive one, made a finding of noncompliance. DOT officials, however, have reported that although the review was concluded in June, they are presently still negotiating with the recipient.

In addition, FAA earlier reported that FAA program personnel had conducted 1,174 Title VI reviews during the first half of Fiscal Year 1971 (and anticipated conducting 1,183 in the remaining portion of the Fiscal Year). These, however, were perfunctory reviews, touching only peripherally on a few Title VI issues (e.g., observation of any discriminatory acts or practices, receipt of complaints, and inspection of lease and concessionaire agreements to insure that required Title VI assurances have been included), and have been discontinued.

In addition to the fact that only a small fraction of DOT's recipients were subjected to Title VI reviews during the second half of Fiscal Year 1971, none of the constituent agencies conducted a pre-approval type of review. As a result, DOT has never initiated enforcement action. The only cases in which recipients have been found to be in noncompliance and corrective action taken have been as a result of complaint investigations or one of the Department's infrequent compliance reviews.

Data Collection

DOT is currently developing Departmental criteria and procedures for collecting racial and ethnic data to be used to evaluate Title VI compliance (as well as compliance with the Fair Housing laws, e.g., Title VIII of the Civil Rights Act of 1968.) It is anticipated that these overall criteria and procedures will be issued "within the next few months."

Recent efforts by some of the constituent administrations to enlarge their respective data collection operations represent a start in the right direction, but these measures are still only in the formulation stages. For example, FHWA presently is preparing an order to collect racial and ethnic data in the early stages of highway development. The order, as it appears in draft form, requires the gathering of extensive data relating to the community in question--data which will establish a profile of the community along racial and ethnic lines in such areas as employment, education, community programs, welfare, and housing. Also, the draft requires that the State highway department explain the effect the highway plan will have on the community's minority population, elaborate upon anticipated problems, and indicate whether these potential problems have been discussed with minorities.

Nonetheless, the order in its present form seems deficient in several respects. For one thing, while the community questionnaire is quite complete, the questions relating to the highway's contemplated impact upon the minority community deal with the problem much too simplistically. For example, one of the questions, "Have these problems been discussed with minorities and have their views been given due consideration?" is susceptible to a "yes" or "no" answer which would fail to demonstrate precisely how minorities were involved in the decision-making process.

Similarly, FAA has prepared a compliance form which will be used by airport managers to report by race and ethnicity all employment at airports as well as services provided the public and employees (e.g., public transportation), contracts awarded, displacement caused by airport expansion, and the like. The form has not been approved although DOT officials hope that it will be completed by February 1972.

UMTA presently requires that applications for assistance contain a map of the jurisdiction of the applicant showing the areas which are inhabited predominantly by Negroes, Puerto Ricans, and Mexican and Latin Americans. The applications must also show existing and proposed new transportation routes, and provide a narrative containing information sufficient to ascertain Title VI compliance. Despite these requirements, minimal use has been made of these maps.

Overall, although DOT constituent administrations, especially FAA, have taken steps to upgrade their Title VI data collection systems, their efforts continue to be mostly of a promissory nature.

Miscellaneous

DOT currently is considering issuance of a regulation, predicated on the general administrative and contracting authorities of the Secretary, which would extend nondiscrimination requirements to the employment practices of all DOT recipients. This would mean that the employment practices, for example, of every State highway department would be subject to such a proscription.

Closely aligned with this proposed measure is DOT's current effort to stimulate improvement in the employment of minorities among the relocation assistance staff of State highway departments. In a June 1971 FHWA report, entitled "Relocation Personnel Survey," it was disclosed that only 60 of the 1,114 State relocation personnel were minorities. Consequently, in an August 1971 memorandum to the FHWA Administrator, the Secretary of DOT expressed his belief that the Department and the recipients of Federal assistance and their contractors should institute an affirmative equal opportunity policy with regard to the employment of persons who carry out relocation responsibilities.

UMTA's Director of Civil Rights and Service Development recently requested an opinion from the Administration's Chief Counsel regarding the minority composition of the executive boards of public transit authorities. This issue of representation on State or local advisory boards which play a role in administering Federal grants has also not been completely resolved as it relates to airport authorities which receive FAA funds. Determining the applicability of Title VI to representation on such boards should be a matter of the highest priority in view of the critical roles that these boards typically play in developing comprehensive plans or in establishing State or municipal funding priorities. Ascertaining whether coverage of these boards is predicated on Title VI or on other statutory authority is of less importance than expeditiously determining that they should in fact be comprehensively covered.

Evaluation

In terms of program size and far-reaching program implications for minority group citizens, FHWA and UMTA have the most significant Title VI responsibilities in the Department. And on this basis, DOT's overall performance in the area of Title VI enforcement activity has been poor. FHWA has still not conducted a Title VI compliance review although guidelines for conducting such reviews have been drafted and circulated to the field. UMTA's Title VI reviews consist primarily of an examination of the recipient's employment practices and do not appear to touch on the significant issue of site selection. This lack of Title VI enforcement activity is no doubt a function of the number of staff assigned to this area; of the four administrations considered here, only the Coast Guard has even one person who devotes more than 50 percent of his time to Title VI matters.

In the area of data collection, some steps have been taken to develop an effective system, yet the overall Department policy in this regard, as well as those of the constituent administrations, still remains in the early stages of development.

AGENCIES WITH RESPONSIBILITY FOR PROGRAMS WITH OTHER THAN MAJOR TITLE VI IMPACT *

Agencies With Responsibility For Programs With Moderate Title VI Impact

Many of the agencies considered in this section administer programs which have minor Title VI implications. Further, a large number of these agencies have delegated the bulk of their Title VI enforcement responsibilities to the Department of Health, Education and Welfare (HEW) pursuant to coordination plans relating to three major areas--higher education, medical facilities, and elementary and secondary schools--developed by the Department of Justice in 1966. Under these plans, HEW has assumed responsibility for coordinating all Federal agency Title VI enforcement procedures for the three areas. This has had the effect of limiting many agencies' enforcement activities in the collection of the assurances of nondiscrimination.

Nevertheless, several of these agencies have retained full responsibility for enforcing Title VI with respect to all or some of their programs subject to Title VI. Two of these agencies, the Small Business Administration (SBA) and the Veterans Administration(VA), administer programs with more

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Includes Atomic Energy Commission (AEC), Agency for International Development (AID), Appalachian Regional Commission (ARC), Department of Defense (DOD), Equal Employment Opportunity Commission (EEOC), Environmental Protection Agency (EPA), General Services Administration (GSA), National Aeronautics and Space Administration (NASA), National Foundation of the Arts and Humaities (NFAH), National Science Foundation (NSF), Office of Emergency Preparedness (OEP), Small Business Administration (SBA), Smithsonian Institution (SI), Department of State (DOS), Tennessee Valley Authority (TVA), and Veterans Administration (VA).

significant Title VI responsibilities* than the other agencies considered in this section.

Examination of the enforcement programs of these agencies reflects a demonstrable difference in how two agencies handle similar responsibilities.

Staffing and Organization

Despite some staffing and organizational deficiencies--namely the fact that its Director of Equal Employment Opportunity and Compliance is at a relatively low grade level (GS-15) and its civil rights office is admittedly short of manpower--SBA continues to have a superior organization for implementing its Title VI related responsibilities. In addition, SBA has made some significant improvements since this Commission issued its October 1970 report.

The SBA civil rights director no longer reports to an Assistant Administrator, but instead reports directly to the SBA Administrator. Moreover, SBA's compliance officers in the field report directly to the Deputy Director for Compliance, rather than to regional program administrators as was the case earlier.

In terms of staffing, SBA has 15 professionals who devote more than half their time to Title VI and closely related civil rights matters, but the time which each devotes to these activities has been decreasing because of additional contract compliance responsibilities which have been imposed on SBA. In recognition of the need to maintain the quantity and to increase the quality of SBA's Title VI related efforts, SBA has requested a supplement to its Fiscal Year 1972 budget which would add 21 new compliance positions to the present ceiling. Moreover, for Fiscal Year 1973, SBA has requested an additional 10 compliance positions in order to implement its new contract compliance responsibilities. SBA anticipates that if this staffing increase is granted there would be a concomitant increase in Title VI activities because many of its present staff would be relieved of duties unrelated to Title VI.

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* The SBA administers several loan programs, which are subject to Title VI as well as to agency regulations which require nondiscrimination in the employment practices of all borrowers. The VA's major Title VI compliance responsibility is limited to proprietary schools, which are privately-owned, profit-making commerical schools, attended by veterans (e.g., barber schools, computer schools); compliance responsibility for most of the other VA programs covered by Title VI has been delegated to HEW.

VA's Title VI organization stands in sharp contrast to SBA's. The Director of VA's Contract Compliance Service, a GS-15 (the person formerly holding this position was a GS-17), has Title VI coordination responsibility; however, the program directors (i.e., the Chief Benefits Director and the Chief Medical Director) are the agency officials who are primarily responsible for Title VI enforcement regarding their respective programs. In addition, the Director of the Contract Compliance Service reports to these program administrators.

Although the VA's major Title VI compliance activity relates to 8,000-10,000 proprietary schools, the Title VI unit within the Contract Compliance Service has only two professionals who devote more than half their time to Title VI enforcement.

Compliance Program

SBA continues to perform compliance reviews of its borrowers. These reviews are conducted by civil rights compliance officers according to comprehensive guidelines developed by SBA. During Fiscal Year 1971, SBA conducted 339 reviews, focusing primarily on employment practices of borrowers and only peripherally on services provided the public. This number represented 141 less than what the agency had expected to perform and covered only a small fraction of the more than 64,000 loans outstanding as of June 1971. It should be noted, however, that many of these borrowers were individual proprietors who employ less than 10 employees.*

SBA's performance on compliance reviews is more than matched by its timely handling of Title VI related complaints and its collection of racial and ethnic data. Although SBA investigations have disclosed numerous instances of noncompliance, all but one were resolved voluntarily--in the one case, the borrower repaid his loan rather than comply.

Again, VA's compliance operation pales in comparison with SBA's. Although VA has had compliance responsibility for enforcing Title VI at proprietary schools since January 1969, no compliance reviews have been conducted to date.** VA personnel are still in the process of developing review procedures. No racial or ethnic data have been collected although a report form has been developed.

VA has conducted some complaint investigations, although there are no guidelines for conducting these investigations. In the case of one complaint, received in September 1970, the admissions policy of a college was found to be discriminatory and the school subsequently provided a limited commitment to revise its policy. This, along with another similar complaint (lodged in November 1970), is under consideration by the responsible program administrator and the General Counsel to determine if the recipients' revised policies satisfy Title VI requirements. VA has recently terminated assistance to one recipient (which it found in noncompliance in Fiscal Year 1970). Moreover, VA is considering action in the case of three other recipients (also found in noncompliance in Fiscal Year 1970). It should be noted that HEW terminated assistance to two of these recipients in 1967.

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* It is estimated that 90 percent of SBA borrowers employ fewer than 10 employees.

** VA does not presently even have a complete listing of the proprietary schools subject to Title VI.

Agencies With Responsibility For Programs of Minor Title VI Impact

A number of agencies (e.g., AEC, AID, NSF, NASA, DOS) have delegated most of their enforcement responsibilities to HEW or to other agencies; consequently, in practice their Title VI organizations and enforcement programs are virtually nonexistent. Yet some of these agencies (e.g., GSA, AEC, NASA), although retaining compliance responsibility for some of their recipients, limit their activity in this regard to collection of assurances of compliance. As a result, some recipients (typically non-profit organizations and professional organizations) are not subjected to compliance reviews, nor required to provide any racial and ethnic data.

Other agencies (e.g., DOD, TVA, OEP) have more affirmative Title VI programs, although the level of enforcement activity for each is not entirely adequate. For example, DOD's most significant Title VI programs are found in the Department of the Army (i.e., the Army Corps of Engineers' civil works program and the civil defense program) and in the National Guard Bureau (i.e., Air and Army National Guard). No racial or ethnic data are collected except regarding strength in National Guard components. Moreover, only the National Guard Bureau has more than one person who devotes more than half time to Title VI matters. Although many of the constituent agencies of DOD conduct limited compliance reviews, no reviews are conducted by civil rights personnel, again with the exception of the National Guard Bureau.*

Further, the TVA has three operational programs falling within the purview of Title VI. Although the dollar value of these programs may not be significant, the benefits accruing to the actual beneficiaries may be substantial.** While TVA does conduct regular compliance reviews, (e,g., in the case of TVA land conveyed to a State or local agency for development of recreational facilities), these reviews, for the most part, tend to be superficial.

Failure To Issue Title VI Regulations

There are several agencies which have Title VI responsibilities, but which have not yet issued appropriate regulations. The National Foundation on the Arts and Humanities, as was noted in this Commission's October 1970 report, has such responsibilities but has not issued the necessary regulations. Although the Foundation drafted such regulations and submitted them to the Department of Justice in October 1970, no action has been taken and the Foundation takes the position that without regulations, they have no authority to enforce Title VI.

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* While compared to other DOD agencies the National Guard Bureau has the most aggressive posture vis-a-vis its Title VI recipients, its program, nevertheless, is not entirely adequate. Only 6 reviews out of a total of 52 recipients (States) were made in Fiscal Year 1971. Moreover, Negro enlistments in the Air and Army National Guard rose only from 1.15 percent to 1.21 percent between 1969 and 1970.

** For example, to promote more effective use of fertilizers TVA provides technical assistance and fertilizer products (at a discount) for tests and demonstrations; while a farmer who is selected to participate in such a program does not receive substantial financial assistance,the technical benefits flowing to him are often significant.

There are also a number of other agencies (e.g., EPA, Federal Home Loan Bank Board, ARC, and EEOC) which have either drafted such regulations or are in the process of doing it.

Evaluation

For the two agencies in this section with relatively significant Title VI responsibilities--SBA and VA--the level of performance ranges from good to grossly inadequate, respectively. The difference between the operations of SBA and VA suggests contrasting degrees of commitment. Moreover,it demonstrates that the Justice Department's effort to coordinate Title VI activities throughout the Government have not been adequate.

Agencies listed as having minor Title VI responsibilities are characterized as such because they have typically delegated the bulk of their responsibilities to HEW. Once the delegation had been authorized, there has been virtually no further contact between the agencies and HEW. Further, although many agencies still retain full responsibility for enforcing Title VI with respect to some of their recipients, this is usually handled in a perfunctory manner. Even those agencies which have established a modicum of a compliance program still tend to exhibit a narrow approach to their responsibilities.

Finally, there are a number of agencies with clear Title VI responsibilities which still have not issued appropriate regulations; this failure, however, is more attributable to the Department of Justice's inactivity than to the agencies'.

REGULATORY AGENCIES

Civil Aeronautics Board

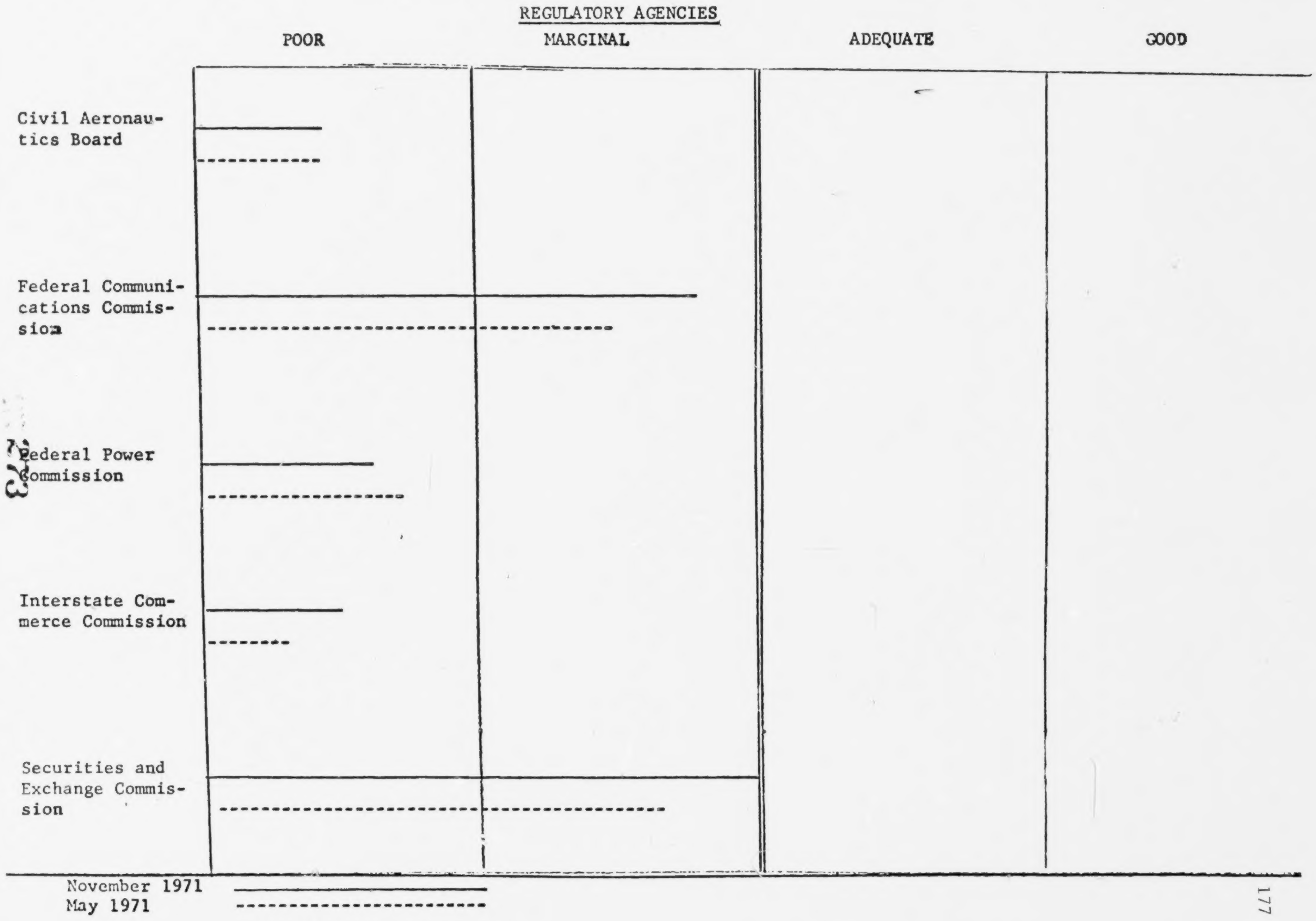
Federal Communications Commission

Federal Power Commission

Interstate Commerce Commission

Securities and Exchange Commission

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER



CIVIL AERONAUTICS BOARD (CAB)

Employment Discrimination by Regulatees

Despite the continued poor employment record of the airline industry, which is regulated by the CAB, no rule has been issued by the Board to prohibit employment discrimination by its regulatees. The CAB informed this Commission nearly seven months ago that it had almost completed work on an advance notice of proposed rule making concerning the employment practices of its regulatees, but the agency has taken no significant action leading to the issuance of the rule.

Challenges to Agency Actions

The CAB continues to reject the policy of providing free legal services to individuals or companies who wish to challenge a proposed Board action, but who do not possess the financial means to do so.

Discrimination in the Provision of Services by Regulatees

The CAB requests its employees to report any evidence of discrimination which they observe while on official travel status. The Board justifies its failure to undertake a more aggressive affirmative program to uncover discriminatory activities by its regulatees on grounds of its belief that that airline industry is "remarkably free of discrimination." The Board bases this conclusion on the lack of complaints alleging discrimination which it has received.

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Employment Discrimination by Regulatees

The FCC has issued rules prohibiting employment discrimination by broadcasters and common carriers (telephone and telegraph companies), and is in the process of issuing such a rule with regard to the operators of community antenna television systems and community antenna relay stations. It has required all licensees coming within the purview of such rules who have five or more employees to file annual reports of their employment pattern by job and racial and ethnic category. In addition, it has required licensees to prepare equal employment opportunity programs and submit them with applications for license renewals, with applications for licenses to cover construction permits for new broadcast stations, and in other specified situations.

The FCC, however, has still neither developed the staff resources nor the procedures to effectively utilize the data it receives or to evaluate the affirmative action programs submitted to it. The annual statistical employment reports filed by licensees are being edited for input into a computer, but as yet no significant use has been made of the data. The equal employment opportunity plans are reviewed by FCC staff to determine if they meet minimal standards of acceptability. Although some such plans have been sent back to applicants for correction, no attempt is presently made to correlate minority group employment data with the affirmative action plans, nor is any independent effort made to determine if the plans represent a bona fide action on the part of the applicants to increase their employment of minority group citizens. Once the data are computerized it is anticipated that print-outs of each station's employment of minorities for two consecutive years will be used in evaluating the plans.

Minority Entrepreneurship

The FCC has no rule prohibiting racial or ethnic discrimination in the sale of radio or television stations. Nor has the Commission recommended legislation requiring broadcast station owners who desire to rid themselves of their franchise to turn in their license to the Commission rather than selling it on the open market.

Although a Federal District Court, in June 1971, held unlawful the FCC policy of rejecting competing applicants for a broadcasting license, no matter how qualified, if the existing licensees "substantially" met the programming needs of their communities, the FCC has as yet taken no affirmative steps to encourage competition for existing stations. In view of the fact that the cost of purchasing an existing broadcasting station is largely made up of the price of the license itself, competitive proceedings could be an effective mechanism for bringing about greater minority group participation in the broadcast industry.

Challenges to Agency Actions

The FCC continues to discuss proposals, but has taken no action to provide legal information and services to members of the public who are financially unable to obtain counsel and who wish to participate in Commission proceedings.

Discrimination in the Provision of Services by Regulatees

Although FCC rules and policies prohibit discrimination in the provision of services by its broadcasters, the Commission has not adopted affirmative mechanisms to uncover and correct instances of discrimination. The Commission relies solely on the filing of individual complaints of discrimination. Field investigations are not conducted of most such complaints.

An FCC request for an increase in the number of field investigators, which was contained in its budget request for Fiscal Year 1972, was approved by Congress, but the number of investigators has not yet been increased because of questions regarding the recent directive that all government departments and agencies reduce personnel and average grade levels.

FEDERAL POWER COMMISSION (FPC)

Employment Discrimination by Regulatees

In November 1970, the FPC ruled, in connection with a petition alleging that a regulatee appeared to be engaging in discriminatory hiring practices, that employment discrimination by its regulatees was outside the scope of its jurisdiction.*

In the course of the litigation which resulted in this decision, the FPC had requested an informal opinion from the Department of Justice on the question of whether it has jurisdiction over the employment practices of regulated companies. Although the request was dated January 27, 1970, no response was received from the Department of Justice until September 17, 1971, more than a year and a half later. The Justice Department opinion concluded that the FPC has authority under the Federal Power Act to issue equal employment regulations with respect to many of its regulatees. The FPC has decided, however, that it will not abide by the opinion of the Department of Justice, but will adhere to its own decision that it lacks jurisdiction in this important area.

Challenges to Agency Actions

The FPC has declined to provide free legal services to individuals or companies who wish to challenge proposed agency actions but who do not possess the financial means to do so.

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* Petitions to review the Commission's order were filed with the U.S. Court of Appeals but were voluntarily withdrawn by the petitioners with the concurrence of the court. The FPC has concluded that its initial decision has therefore become the law of the Commission with regard to future proceedings.

Discrimination in the Provision of Services

Of the regulatory agencies discussed in this chapter, only the FPC has adopted an affirmative program of attempting to insure the nondiscriminatory utilization of the services and facilities provided by its regulatees to the public. FPC field examiners have been directed to observe visually whether minority group citizens utilize the recreational facitilies at the hydroelectric plants it licenses and, where there is low minority participation, to determine the reasons. The existing instructions provided to the field examiners, however, have proved to be inadequate and have caused the observation process to be "not very satisfactory." New instructions are presently being drafted.

Although the FPC recognition of its responsibility in this area is significant, the agency's overall effort to fulfill that responsibility has been minimal. Observations have been made during the week rather than on weekends and holidays when the use of recreation facilities is at a peak. In addition, since no local minority group leaders or citizens are interviewed it is doubtful whether FPC field examiners can carry out the directive of determining the reason for low representation of minority group persons at recreation sites when such is the case. Further, the number of observations the FPC hoped to undertake during this past recreation season has been reduced because of travel budget restrictions.

INTERSTATE COMMERCE COMMISSION (ICC)

Employment Discrimination by Regulatees

On May 6, 1971, the ICC instituted a general rule making proceeding to examine and consider whether discrimination because of race, color, sex, religion, or national origin exists in the employment and other practices of motor and rail carriers subject to its jurisdiction. The proceeding is also addressed to the questions of whether any discrimination which may be found to exist is violative of the law, whether the ICC has the jurisdiction to deal with any unlawful discrimination which it may find, and whether it should promulgate rules and regulations or undertake some other program in this area. Dates for the filing of initial and reply statements concerning the rule making were fixed for October 1 and November 1, 1971, but have been extended, at the request of the Equal Employment Cpportunity Commission, to December 1, 1971 and January 5, 1972, respectively.

The ICC has hesitated to predict the length of time it will take to reach a decision as a result of the general rule making proceeding. If the ICC finally does decide to adopt such a rule it will have to initiate a final rule making proceeding, at which time comments would be requested concerning a specific proposed rule requiring regulatees of the ICC to be equal opportunity employers. These steps,however, are still quite far in the future. Although it chose not to do so, the ICC could have followed the example set by the Federal Communications Commission. That is, instead of instituting a general rule making proceeding prior to proposing a specific rule prohibiting employment discrimination by its regulatees, the agency could have expedited the process by issuing a specific proposed rule forbidding discrimination by its regulatees and asking for comments concerning such a rule. That procedure has been followed by the Federal Communications Commission on three separate occasions, regarding rules concerning employment discrimination by broadcasters, by common carriers (telephone and telegraph companies), and by community antenna television systems.

Minority Entrepreneurship

The ICC has made no change in its rules regarding the granting of trucking licensees. Its present rules protect existing licensees, almost all of whom are majority group citizens, from competition. According to the ICC, action in this area must await the outcome of its present general rule making proceeding. Yet the granting of licenses is not one of the matters involved in the proceeding.

Challenges to Agency Actions

The ICC does not provide free legal services to individuals or groups who wish to challenge proposed Commission actions but who cannot afford legal assistance. This issue has been pending before the Commission for the last eight months.

Discrimination in the Provision of Services by Regulatees

The ICC has not developed a program of affirmative reviews to uncover acts of discrimination by its regulatees. Rather, it relies solely upon the filing of individual complaints. Any change in this practice of the Commission must also await the outcome of the ICC's general rule making proceeding.

THE SECURITIES AND EXCHANGE COMMISSION (SEC)

Public Disclosure by Stock Companies of Legal Procedures Involving Charges of Discrimination

The SEC has required registering companies to disclose to the public any proceeding relating to civil rights which would be material to the economic position of the company. Thus companies are required to disclose to the public a proceeding arising under Title VII of the Civil Rights Act of 1964, a debarment or other sanction imposed under Executive Order 11246, and any sanctions imposed for violation of the nondiscrimination rules of any Federal regulatory agency, whenever such actions are material. If the above legal proceedings are pending or are known to be contemplated by government agencies, but disclosure is omitted on the ground that it is not material, the registering companies must furnish, as supplemental information not part of the filing, a description of the omitted information and a statement of the reasons for the omission.

The SEC does not, however, check to determine if companies which come within the scope of this new requirement have filed the appropriate statements.

Proxy Request Relating to Civil Rights

Although overall changes in SEC proxy rules have been under study since September 1970, the agency has not yet amended its regulations, which presently prohibit stockholders from asking questions involving "general, economic, political, racial, religion, and social" considerations.

These regulations have prevented socially motivated stockholders from suggesting changes in company policy that would permit corporate enterprises to play a more significant role in contributing to the resolution of civil rights problems.

Evaulation - CAB, FCC, FPC, ICC, SEC

In October 1970 when this Commission first focused its attention on the civil rights posture of the regulatory agencies, it found that although these independent agencies have a significant role to play in combatting racial and ethnic discrimination they had taken almost no action to fulfill this responsibility.

There have been some positive steps since that time:

Expansion by the FCC of its rules prohibiting employment discrimination by broadcasters to cover its other regulatees, including telephone and telegraph companies.

The FCC requirement that its regulatees provide annual data reflecting minority group employment and that they periodically file affirmative action plans for increasing minority employment.

Adoption by the FPC of a mechanism to determine the extent to which minorities use licensed recreational facilities.

Issuance of a requirement by the SEC that registered companies disclose any significant adverse action taken against them as a result of their equal employment opportunity policies.

The overall reaction of these agencies, however, has been disappointing. Although the rigidity of their lack of responsiveness differs, neither the ICC, the CAB, nor the FPC has followed the FCC's lead by issuing a rule prohibiting employment discrimination by their regulatees. No action has been taken by any of the four agencies on such other fundamental matters as the provision of free legal services, the development of effective compliance review mechanisms, and the amendment of license issuance procedures.

Even in area where initial affirmative steps have been taken by the agencies, their followup has been weak and ineffective. For example, the FCC's program to enforce the equal employment opportunity requirement it imposed on its licensees is understaffed and concerned more with adherence to paper rules than with substantive compliance that will result in the actual employment of more minorities. Unique among the regulatory agencies, the FPC has undertaken to determine if minority group citizens are discriminated against in the provisions of services by its regulatees, but FPC officials concede that the reviews it had undertaken in this effort have been unsatisfactory, lacking in scope and quality.

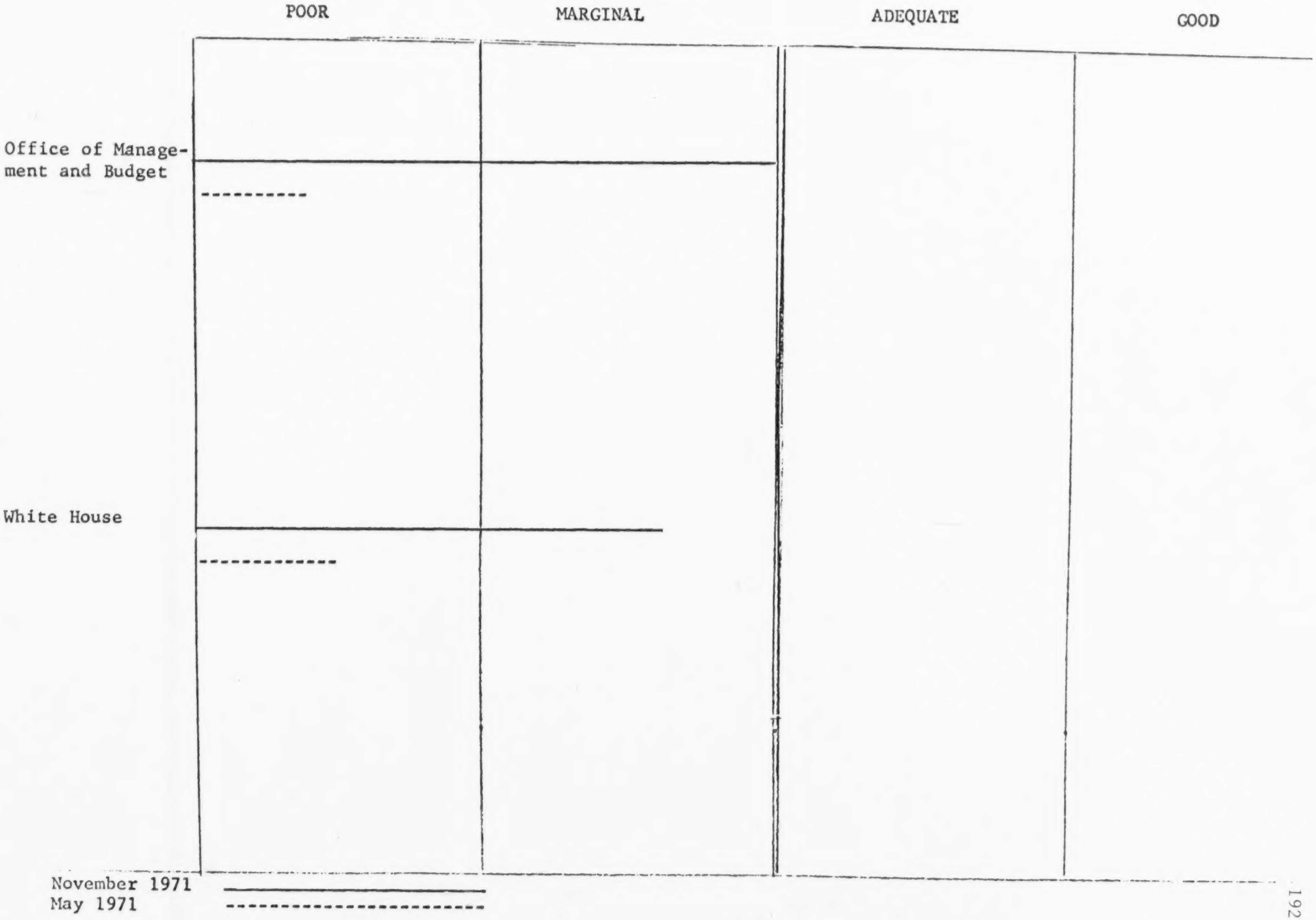
POLICY MAKERS

Office of Management and Budget

White House

THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT -- ONE YEAR LATER

POLICY MAKERS



OFFICE OF MANAGEMENT AND BUDGET (OMB)*

Definition of Civil Rights Role

In a memorandum dated March 25, 1971, all OMB examiners and management staff were instructed by the Director, George Shultz, to make civil rights concerns an integral part of their regular functions. The memorandum also assigned specific civil rights duties to several OMB divisions.

The General Government Programs Division (GGPD), a budget examination division which reviews the budgets of a number of civil rights agencies**, was given responsibility for monitoring the entire OMB civil rights program. Among GGPD's specific assignments were: to revise Circular A-11, which defines the requirements for agency budget submissions, so as to inform agencies of the data required by OMB relating to their civil rights activities; to revise the Examiners' Handbook, thereby providing guidance in the review of civil rights programs; to coordinate a program of information sessions on civil rights enforcement for OMB staff; and to publish a Special Analysis of the Budget on civil rights.***

Management divisions were also instructed to insure that civil rights elements are considered in their efforts. Specifically, civil rights responsibilities outlined by the Director included evaluation and improvement of civil rights statistics, consideration of civil rights implications in the review of proposed and pending legislation, and the selective review of civil rights policies and programs which cross agency lines.

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* The Office of Management and Budget, which is part of the Executive Office of the President, was created by Reorganization Plan No. 2 of 1970. It assumed all of the responsibilities of its predecessor organization, the Bureau of the Budget, for preparing the President's Budget. More importantly, however, it is to focus on means of implementing national policy and to evaluate the manner in which agencies carry out their program assignments. OMB is divided into budget divisions, consisting mainly of examiners, and management divisions, consisting mainly of management analysts.

** For example, the Equal Employment Opportunity Commission and the Cabinet Committee on Opportunities for the Spanish Speaking.

*** This will be a report issued to the public by OMB which reviews data on agency civil rights activities in such areas as school desegregation, Fair Housing, and equal opportunity in Federal employment.

The Director's memorandum has provided the framework for the OMB civil rights effort. It is a comprehensive document which provides clear guidelines for staff action. The test of OMB performance can therefore be measured by the extent to which Mr. Shultz's directive has been implemented.

Civil Rights Unit

In the late Spring of 1971, GGPD established a Civil Rights Unit to carry out the responsibilities assigned to the Division by the Director's March 25 memorandum. The Unit is staffed with two budget examiners employed specifically for this purpose.

Although the Division Chief of GGPD and his deputy devote the majority of their time to assignments unrelated to civil rights, they participate in the work of the Civil Rights Unit as supervisors of the civil rights examiners, e.g., they assist in the development of and clear almost all of the memoranda written by the two examiners.

The largest single responsibility of the Civil Rights Unit staff is the fulfillment of their role as budget examiners for civil rights agencies such as the Equal Employment Opportunity Commission, the Community Relations Service of the Department of Justice, and this Commission. This assignment accounts for about 30 percent of their time, exclusive of time spent in the field as part of the process for familiarizing themselves with the programs of their assigned agencies. The two examiners also serve on the staff of the Committee on Civil Rights of the Domestic Affairs Council.

In addition, these examiners have been responsible for the bulk of GGPD civil rights activity. For example, they have provided guidance to other examiners, attended numerous budget hearings, drafted revisions for the Examiners' Handbook, drafted inhouse and interagency memoranda concerning the inclusion of civil rights elements in the budget process, participated in both an OMB and an interagency committee's review of racial and ethnic data systems, organized and evaluated responses to issues raised by the Congressional Black Caucus members and by this Commission's questionnaires, and cooperated in various civil rights activities undertaken by the management divisions. They have also prepared materials on matters such as Federal civil rights expenditures and women's rights for use in a formal review of civil rights issues in the Fiscal Year 1973 Budget recently undertaken by OMB senior decision making staff.

Despite the exceptional efforts of the Civil Rights Unit staff, organizational limitations have prevented the Unit from accomplishing many of its objectives. First, the workload of the Unit is beyond the capabilities of a two-man staff, with many of their assignments extending beyond the implementation of the OMB civil rights program.

A second and more fundamental limitation is the placement of the Unit within a budget division, thus reducing its effectiveness in providing leadership and monitoring the total OMB civil rights effort. The Unit lacks the authority within the organizational structure of OMB to provide adequate oversight of both management and budget divisions. Further, since it is a part of a budget division, it has developed an expertise regarding the budget process, but it has not become equally conversant with the functioning of the management divisions and has, therefore, been less effective in monitoring them.

Budget Examiners*

Responsibilities

While the Director has not assigned specific civil rights duties to the budget examiners, he has emphasized the importance of using the budget process to identify civil rights issues and evaluate agency civil rights performance. The examiners' civil rights responsibilities are explained generally in revisions to the Examiners' Handbook, which now direct examiners to review each agency's civil rights activity. On October 19, 1971, more comprehensive written instructions concerning the review of civil rights programs were provided to OMB staff in the form of a memorandum from the Director. This memorandum set forth guidelines for the analysis of agency activity relevant to such important civil rights laws and Executive orders as Title VI of the Civil Rights Act of 1964, Titles VIII and IX of the Civil Rights Act of 1968, and Executive orders relating to contract compliance, equal opportunity in Federal employment, and Fair Housing.

Additionally, in the past six months budget examiners have received several *ad hoc* assignments relating to civil rights. Examiners of key agencies have participated in the collection and evaluation of information on particular issues stemming from this Commission's questionnaires and the Congressional Black Caucus inquiries. Examiners of some 20 agencies with poor internal equal opportunity performances were notified to discuss this with their agencies.

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* There are approximately 200 budget examiners in OMB, each responsible for the review of the budget submissions of an agency, group of agencies, or one or more agency subdivisions. In the review, examiners place special emphasis on the workload of and resources allocated to agency programs. It is their duty to make recommendations for the improvement of agency program performance and to call to the attention of OMB decision making officials problems which are not appropriately resolved.

The nature of the budget process is such that examiners have a great deal of discretion in determining which issues they will focus on. This is true because the range of subjects involved in appraising performance of any given agency or bureau within an agency is so vast that OMB has come to rely on the individual examiner's subjective judgment as to the areas of importance. The subjectivity of the budget review process as applied to the field of civil rights raises the possibility of additional problems because examiners, who are for the most part inexperienced in civil rights analysis, may well choose not to emphasize this aspect of an agency's program.

It is therefore most important that the civil rights responsibilities of the examiner be made quite explicit and that the instructions provided to him be more detailed than is ordinarily the case. The Director's March 25 memorandum set forth OMB policy with sufficient clarity and his October 19 memorandum, although not issued in time for maximum use in the current budget season, was a good second step in terms of defining for examiners what they must review in the area of civil rights. Further instructions need to be provided to help the examiners evaluate agency civil rights programs in terms of structure and effectiveness. In addition, periodic monitoring of examiner activity of this subject must be conducted in order to insure a uniformly high level of performance.

Training

GGPD has been instructed to develop a program of civil rights information to acquaint OMB staff with civil rights concepts and practices. Since the May 1971 Commission report, however, only one training session has been conducted, attended by only some 40 staff members, principally examiners. Additional formal information sessions are not planned until early 1972 when such topics as equal employment in the Federal Government, Title VI of the Civil Rights Act of 1964, and beneficiary data collection may be scheduled.

These formal sessions have been augmented by guidance provided to individual budget examiners. The Civil Rights Unit has held informal meetings with a number of examiners to bring to their attention issues relating to the examiners' assigned agencies and to assist in evaluating agency programs and resolving civil rights problems. The Civil Rights Unit has also initiated individual meetings between OMB examiners and staff from the Title VI Section of the Civil Rights Division, Department of Justice. Further, some examiners, because of prior civil rights experience, personal inclination, or particular agency assignment have a good grasp of civil rights issues and analysis. These examiners have provided assistance to other examiners within their divisions.

While both formal and informal training have been offered to examiners, OMB's program in this regard has been insufficient. The formal information sessions have been poorly attended. Moreover, few sessions have been held because of the press of the budget season*. The informal training has been provided mainly by the Civil Rights Unit, but its staff are new and are, themselves, in the process of learning the complexities of civil rights analysis. Further, the job of providing guidance and direction to an examiner staff of approximately 200, with little previous experience in civil rights enforcement, is far too large a task for the part-time efforts of two people.

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* The budget season begins for most agencies with their submittal to OMB in September and ends when their budget is approved by OMB in December. Major departments file a preliminary budget with OMB in the late Spring; thus, OMB is heavily involved in budget approval activity for more than 6 months a year.

The Budget Process

Budget Submission

Early in the current budget season, OMB informed all Federal agencies that their budget submissions should reflect Administration goals and responsibilities in the civil rights area. Subsequently, Circular A-11, which sets forth basic policy regarding agency budget submissions was revised to direct agencies to include in their budget submissions information relating to all of their civil rights responsibilities.

These general directives have not yet been translated into specific requests for information. Currently, OMB staff is preparing instructions to agencies and departments setting forth specific data requirements, including those related to staff and financial resources. Consideration is also being given to the issuance of an OMB request for data on beneficiaries of programs of Federal assistance. Even if these plans are finally translated immediately into official OMB requests, however, the results of these requests will not be reflected in the Budget currently in preparation, the Budget for Fiscal Year 1973.

The Budget Hearing Process

After an agency budget has been submitted and reviewed by OMB staff, the agency head appears before OMB officials, including the examiner, for detailed questioning concerning agency programs. This year for the first time comprehensive civil rights questions were asked of most agencies. Inquiries concerning civil rights were made either by the agency budget examiner or by staff from the civil rights unit, who attended a large number of agency hearings. In addition, some examiners prepared written questions concerning civil rights which were provided to agency personnel with requests for a detailed response.

The fact that civil rights questions were asked in budget hearings represents significant progress. Nonetheless, many examiners were not prepared to ask penetrating questions, and there was little uniformity in the emphasis placed on civil rights in the hearings.

The Director's Review of Civil Rights

The Spring Previews and the Fall Director's Reviews are formal reviews in which staff present papers on key issues for consideration by the senior decision making staff. Decisions concerning OMB policy often result from such Previews and Reviews. This past Spring, for the first time, a review focused on civil rights issues. This Fall, a Director's Review on civil rights was held covering such issues as Federal civil rights expenditures and women's rights.

While it is significant that these reviews have been held, they do not purport to be exhaustive in terms of subject areas covered. The Fall review did not, for example, include a systematic assessment of the extent to which Federal civil rights enforcement policies have been implemented by Federal departments and agencies.

Special Analysis of the Budget

This year for the first time the Special Analysis of the Budget* is being prepared on civil rights. Similar to the Analysis regularly published on Federal social programs, such as education, health, reduction of crime, and housing, the civil rights Analysis will focus on the resources allocated to the Federal Government's civil rights activities and enforcement programs.

In order to obtain information for this Analysis, OMB plans to request agencies to submit narrative statements and budget data on civil rights programs, in areas such as Federal assistance, Fair Housing, and voting rights. Information will also be requested concerning the processes and procedures developed to insure implementation.

Collection of data concerning civil rights activity has generally been inadequate, and OMB staff are not anticipating complete compliance with its requests in the first year. Thus, it is expected that the absence of meaningful civil rights data will limit the scope of at least the first Special Analysis on civil rights.

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* A Special Analysis is a review of a subject in terms of its funding, its goals and policies, and its accomplishments.

The Management Divisions

Program Coordination Division (PCD)

This Fall two members of the PCD staff were assigned to full-time civil rights duties. They will also serve as staff to the Committee on Civil Rights of the Domestic Affairs Council and much of their time has already been devoted to the preparation of position papers for this Committee on such issues as Title VI of the Civil Rights Act of 1964, Federal employment, and contract compliance. It is intended that the PCD full-time civil rights staff will work closely with the GGPD Civil Rights Unit. The focus of the PCD staff will be almost exclusively on civil rights issues which are systemic to the Federal establishment or which involve more than one or two agencies.

PCD staff have reviewed several civil rights actions which cut across departmental lines, e.g., the minority bank deposit program and Federal assistance to Black colleges. The results of these reviews are being made known to agency officials concerned and the agencies are being monitored to determine the extent to which the noted deficiencies have been corrected.

This selective review process has not, however, been applied to agency programs of civil rights enforcement and no review has been conducted to assess the extent to which benefits of Federal programs are reaching minority beneficiaries on an equitable basis. Nonetheless, the designation of two full-time staff people, plus supervisory support, to monitoring civil rights problems which cross agency lines represents another improvement in OMB's oversight capacity.

Although PCD has a civil rights staff, no staff member has been assigned the function of monitoring and reviewing the civil rights activities of the management divisions or providing training for its staff, despite the fact that adequate overview of these divisions is not provided by the civil rights unit in GGPD.

In addition, no staff member has been assigned the responsibility for implementing the directive of ensuring that civil rights elements are included in all management division functions. In fact, only in the budget divisions of OMB has there been an attempt to incorporate civil rights considerations in the regular division functions. The management divisions have not yet been required to conduct a systematic review of their activities to determine the need for additional civil rights effort. For example, no systematic review of the more than 75 OMB circulars in effect, providing official instructions to Federal departments and agencies, has been conducted to ensure that civil rights factors are included wherever necessary. In selective reviews by PCD, e.g., employment of Vietnam veterans, special attention is not regularly focused on civil rights issues.

Management Systems for Goal Setting

OMB staff has recently established a system of program evaluation--the performance management system. In this system, OMB participates with agencies in setting measurable goals for particular programs. Progress in meeting these goals is then reported on a quarterly basis. OMB plans to apply this system to about fifteen civil rights programs, covering such areas as equal opportunity in employment and housing, and desegregation of schools. In developing the performance management system for civil rights OMB has accepted the concept of civil rights goals and timetables. But, it has not made a Government-wide recommendation that they be used by all agencies to measure progress in civil rights enforcment. It has not, in fact, even made public its endorsement of the concept of goals and timetables. The extent to which goals and timetables will be applied to additional programs with civil rights implications is dependent upon the success of this system with the initial group of programs.

Thus, the performance management system is not yet operational as applied to civil rights programs. In view of the significant time lapse before the system can reach most Federal programs with civil rights implications, there is no indication that one of its major purposes--to communicate to program managers a sense of their civil rights responsibilities--will be accomplished in a timely fashion.

Minority Data Collection and Use

In the Director's March 25 memorandum he acknowledged the fact that absence of meaningful civil rights data is a major gap in the evaluation of the civil rights enforcement effort. Since that time, two OMB activities have been geared toward improvement of agency racial and ethnic data collection.

OMB staff has conducted a review of existing racial and ethnic data collection systems of selected agencies in conjunction with the Subcommittee on Racial Data Collection of the Interagency Committee on Uniform Civil Rights Policies and Practices* Those agencies reviewed were requested to develop affirmative action plans to improve their data systems.

Revised standards for racial and ethnic classification have been drafted and are awaiting internal OMB clearance for inclusion as a supplement to Circular A-46, which standardizes Federal statistical procedures.

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* See the section of this report dealing with the Department of Justice, Title VI Section, for a discussion of this subcommittee's activities.

To date, however, OMB has formulated no plans to recommend a Government-wide collection of racial and ethnic data but is still studying the feasibility of such a policy. It has not, in fact, even indicated, on a Government-wide basis, its approval of the collection of racial and ethnic data for the measurement of civil rights enforcement progress.

As a result, OMB is not in a position to conduct extensive evaluation of agency civil rights programs. Although budget examiners are responsible for considering the extent to which programs are reaching eligible beneficiaries, the absence of program data on the racial and ethnic background of participants and eligible beneficiaries limits their ability to assess the extent to which agency programs of assistance are reaching minority group citizens.

Legislative Review

OMB is currently preparing a comprehensive revision of Circular A-19, which covers legislative clearance procedures, directing agencies to incorporate instructions to consider civil rights issues in the analysis of pending legislation. Interim instructions prior to the revision of Circular A-19 have been issued, directing that in their review of legislation, agencies should evaluate the extent to which the legislation carries out the provisions of existing civil rights law and is consistent with Administration's civil rights policy. OMB has also taken steps to include evaluation of these considerations in its review of agency reports, testimony, and draft legislation in the legislative clearance process.

Evaluation

OMB has made notable progress in monitoring Federal civil rights enforcement. Six months ago the civil rights program at OMB consisted primarily of plans for future action, as outlined for OMB staff in a memorandum from the Director on March 25, 1971. Now OMB has full-time civil rights staff and has made considerable progress in executing the requirements of the Director's memorandum.

Many of OMB civil rights accomplishments in the past six months have been focused on ensuring that civil rights concerns will be included in the budget process. For example, the Examiner's Handbook and the circular clarifying agency budget submissions have been appropriately revised. Other significant accomplishments have included the Director's review on civil rights; preparations for a Special Analysis of the Budget on civil rights; selective review of civil rights programs which cross agency lines; review of agency racial and ethnic data collection systems; adaptation of the performance management system to the evaluation of civil rights programs; and inclusion of civil rights concerns in the legislative clearance process.

The OMB program, however, is not without serious weaknesses. Its Civil Rights Unit is significantly understaffed and suffers further from its placement in one of the budget divisions rather than in the Director's Office. The management divisions not only lack supervision from the Civil Rights Unit, but also lack any internal mechanism for civil rights oversight and coordination.

While opportunities for including civil rights concerns have been increased in several facets of the budget process, the extent to which the examiners have been concerned with civil rights issues in the budget process is still to a large degree dependent upon their individual priorities. Further, while the review of agency estimates and the preparation of the Special Analysis both are dependent upon civil rights data, such data are largely unavailable. This has restricted use of the budget process for the analysis of agency civil rights performance.

Although selected civil rights issues are studied by OMB's top decision making staff in the Director's Review, no review has been conducted to assess the extent to which Federal civil rights enforcement policies have been implemented by Federal departments and agencies. Further, no review has been conducted to assess the extent to which benefits of Federal programs are reaching minority group citizens.

In spite of the fact that OMB has recognized the need for such mechanisms as racial and ethnic data collection and goals and timetables, it has failed to issue Government-wide directives instructing agencies to adopt them.

In short, OMB's program needs substantial improvement. But on the basis of the efforts it has undertaken in the past six months, there is every reason to believe that these improvements will be made and that OMB, within the next year, will become the single most important and effective mechanism in the Federal civil rights effort.

THE WHITE HOUSE

White House Civil Rights Staff

In the past six months the White House has more than doubled the staff allocated to civil rights, an annual total increase of more than three man years. In April, only three White House staff members spent more than 50 percent of their time on civil rights and five, at least 25 percent. Currently, there are nine staff members spending more than 50 percent of their time on civil rights; four, more than 25 percent. The increase is largely accounted for by the addition of the Deputy Assistant to the President for Domestic Affairs and his staff, all of whom are concerned with problems of school desegregation.

The White House Information System

The White House has adopted a new system for obtaining information on Federal agency civil rights enforcement activities. The system utilizes the expanded resources of the Office of Management and Budget (OMB) devoted to monitoring civil rights.

The system, as implemented, has two significant failings. It relies solely on OMB for information, a source which is not without serious flaws at this juncture; and it has been called into effect only twice in the past six months: to prepare a response to the recommendations of the Congressional Black Caucus and to oversee agency responses to this Commission's questionnaire of last April.

Information regarding particular agencies is not forwarded regularly to the White House, either from OMB or from departments and agencies. Neither OMB nor senior departmental officials have been given instructions specifying what information concerning civil rights enforcement activities should be forwarded to the White House.

Civil Rights Committee of the Council on Domestic Affairs*

A Civil Rights Committee of the Council on Domestic Affairs has been established, and has been assigned the responsibility for coordinating existing Government-wide policies and programs, reviewing key civil rights issues, and analyzing the need for and recommending the content of additional civil rights policies. The Committee has held only three meetings thus far, but plans to meet whenever enough crosscutting policy issues exist, at a minimum on a quarterly basis. The next meeting of the Committee is tentatively scheduled for late November or early December to discuss major civil rights issues arising out of the Fiscal Year 1973 budget review process. To augment these general meetings the Committee utilizes smaller working groups of members who are directly concerned with a specific issue, e.g., Fair Housing, school desegregation.

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* The Council on Domestic Affairs was created by Reorganization Plan No. 2 of 1970 to coordinate policy formulation in the domestic area. Its members include most heads of Cabinet Departments and it has a full-time staff directed by John D. Ehrlichman, Assistant to the President for Domestic Affairs.

The Committee has no full-time staff. In October, four OMB staff members with full-time civil rights responsibilities were assigned on a part-time basis to assist the Committee. Position papers for the Committee members have been developed by the staff on a number of issues.

Among the Committee's activities have been participation in the development of the President's Fair Housing statement of last June, and, at its October meeting, endorsement of the concept of numerical goals and timetables for increased minority group participation in Federal employment.

Thus, a mechanism for White House policy review has been developed and has been applied to civil rights policy decisions. The Committee has not, however, undertaken an across-the-board review of civil rights enforcement policies, and, to date, has focused only on a limited number of issues. Nor has it called for specific goals and timetables for the execution of civil rights enforcement policy.*

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* Only in the very specific area of deposits in minority lending institutions has the Administration translated Federal policy into quantifiable goals.

Policy Implementation

The White House has not established the mechanisms and procedures necessary to implement expeditiously the civil rights enforcement policies and goals of the Federal Government. White House staff consider this responsibility to reside within OMB. They have, however, failed to take the initiative to inform themselves of the extent or manner in which OMB carries out this function and thus are not fully aware of OMB's uneven monitoring of the implementation of Federal policy (see section on OMB).

Civil rights enforcement activities of White House staff have been primarily confined, as in the past, to a large number of worthwhile, but ad hoc, projects. The White House staff continues to maintain contact with senior officials in the Federal civil rights community, to meet with minority group leaders, and to provide input into Presidential messages, policies, and legislative proposals. There is, however, no systematic or comprehensive effort on the part of White House staff for review of the successes and failures of Federal civil rights enforcement activities.

National Civil Rights Goals and Priorities

The ultimate source for policy guidance on national civil rights goals and priorities is the President. While firm and unequivocal policy direction from the President is no guarantee of effective civil rights enforcement, it is an essential precondition to vigorous, Goverment-wide action. Unless the bureaucracy is given to understand that civil rights is a matter of personal concern to the President, it is unlikely to alter the status quo. And unless policy direction from the President is clear and unequivocal, significant improvements in agency performance are equally unlikely.

In the past six months, the President has made policy statements to the Nation concerning Federal civil rights policies and priorities on a limited number of issues, most notably on Fair Housing, School Busing, and Minority Business Enterprise.

The net effect of the President's statements has not been to provide the clear policy direction necessary to encourage the Federal bureaucracy to step up its efforts to enforce civil rights laws. For example, as this Commission has pointed out, the President's comments opposing busing to facilitate school desegregation, by failing to offer a realistic alternative, may well be interpreted as a sign of a slowdown in the Federal desegregation effort.

The President's Fair Housing statement was strong and affirmative in a number of respects, such as emphasizing the need to overcome the effects of past discrimination as well as eliminating future discriminatory practices, and establishing results as the measure by which progress in fair housing is to be evaluated. Other aspects of the statement, however, were less so. The President's assessment of the extent of Federal authority was restrictive, characterizing the Federal role in the housing area as an essentially passive one. Further, he drew a distinction between segregation resulting from income and that resulting from racial discrimination which, while valid in some respects, may nevertheless serve to reinforce the racial exclusionary policies and practices of many suburban communities.

The President has announced increases in the financial resources committed to minority business entrepreneurship. This represents a potentially significant step forward in providing minorities with the opportunities to share in business ownership and management.*

Evaluation

A Committee on Civil Rights has been formed in the Council on Domestic Affairs. The full Committee has had three meetings. Smaller working groups of the Committee members have met on other occasions to discuss specific issues. The President has assigned the role of civil rights policy development and review to this Committee.

This delegation is in line with a recommendation of the Commission, but the Committee has not been as active as is necessary to carry out this major responsibility. It has, to date, discussed only a limited number of issues and has devoted no attention to some of the basic ones. For example, it has not begun working on so fundamental an issue as the development of a set of quantifiable goals for the entire civil rights enforcement effort with a timetable for their achievement. It does not have a full-time staff of its own and has undertaken no systematic review of existing departmental policy decisions affecting civil rights enforcement, a step which is essential if substantial progress is to be achieved within a reasonable time.

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* The effect of these added resources will be significantly diminished unless strong commitment is also made to improving the educational, training, employment, and managerial opportunities for minority group members.

The White House staff relies heavily on OMB for information concerning the Federal civil rights enforcement effort. Yet OMB is still in the process of gearing up to meet its own civil rights responsibilities. Further, there is no regular exchange of information between OMB and White House staff or between the White House staff and agency officials in the broad spectrum of civil rights issues.

A key element in an evaluation of the White House role in civil rights enforcement is the position taken by the President himself. The President's posture, as gleaned from his statements and other actions over the last six months, has not been such as to provide the clear affirmative policy direction necessary to assure that the full weight of the Federal Government will be behind the fight to secure equal rights for all minorities.

Thus, while the White House has taken some important steps toward fulfilling its civil rights leadership role, there remains a need for significant improvement. Chief among the inadequacies is the failure to develop and to communicate to the public a sense of urgency over the need to end discrimination. In short, while the basic mechanism necessary to ensure the successful operation of the Federal civil rights enforcement effort has been established, it has not yet begun to operate in an effective manner.

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